

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

WEDNESDAY, MAY 9, 2012

VOLUME 1

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

8:30 a.m.

Wednesday, May 9, 2012

La Fonda on the Plaza

Ballroom

Santa Fe, New Mexico

COMMITTEE MEMBERS PRESENT:

Ms. Rosita Worl

Ms. Sonya Atalay

Mr. Alexander Barker

Ms. LindaLee Kuuleilani Farm

Mr. Eric Hemenway

Mr. Adrian John

Mr. Mervin Wright, Jr.

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1 CALL TO ORDER AND ROLL CALL

2 ROSITA WORL: Good morning. Good morning to
3 everyone. We will now go ahead and call the NAGPRA
4 Review Committee meeting to order and request -
5 let's do a roll call, please.

6 SHERRY HUTT: Yes, good morning, Madam
7 Chairman, members of the Review Committee. At this
8 time, we will begin the 46th meeting of the Native
9 American Graves Protection and Repatriation Review
10 Committee. In calling roll, Rosita Worl?

11 ROSITA WORL: Here.

12 SHERRY HUTT: Mervin Wright?

13 MERVIN WRIGHT, JR.: Here.

14 SHERRY HUTT: Adrian John?

15 ADRIAN JOHN: Here.

16 SHERRY HUTT: Eric Hemenway?

17 ERIC HEMENWAY: Here.

18 SHERRY HUTT: LindaLee Farm?

19 LINDALEE FARM: Here.

20 SHERRY HUTT: Alexander Barker?

21 ALEXANDER BARKER: Here.

22 SHERRY HUTT: Sonya Atalay?

23 SONYA ATALAY: Here.

24 SHERRY HUTT: All members are here and
25 accounted for. Thank you.

1 ROSITA WORL: Thank you, Sherry. If I may, I'd
2 like to call on Joe Joaquin to do the invocation.

3 **INVOCATION - JOE JOAQUIN**

4 JOE JOAQUIN: Thank the committee for letting
5 me do the prayer today. It's usually to me - I
6 come from Arizona. Usually to me you have a person
7 that's from the area here. I don't like to do
8 this, but in a way, in my own way, it's kind of
9 disrespect to the people that live here. But it is
10 an honor to do this, you know. It's been a while
11 since I stood before these guys or in front of them
12 to do this (portion of comment inaudible).

13 But, you know, we gather these days to ask for
14 the Creator to listen to us, to all of us. So
15 whatever comes out of this meeting, the results of
16 all of these things that we're going to listen to
17 today, that it comes off in His way and our way.
18 Because I know there's - sometimes there's ill
19 feelings amongst people that come here and want to
20 say the things about what they have to do. Again,
21 we live in a non-Indian world today where we say,
22 okay, your time is up, no more. In the good old
23 days, we sat until the issue was finished. But
24 that's how it is today.

25 In my own way, you know, we ask the Creator to

1 be with us, to be the silent listener, to give us
2 the strength and the wisdom to make these decisions
3 for our people, all people, not just who we are
4 today. It's for all people throughout this nation.
5 So I'm going to do this in my own language, but
6 still remember now, I'm just doing this in my
7 second language today.

8 (Native American language.)

9 Thank you.

10 ROSITA WORL: Thank you, Joe. Thank you also,
11 Joe, for your years of service to NAGPRA and also
12 for being a friend of the NAGPRA Review Committee.

13 **INTRODUCTION - ARMAND MINTHORN**

14 ROSITA WORL: If I may take the privilege, I'd
15 like to introduce a very special person, who has
16 also given many years of service to the - to
17 NAGPRA, serving on the NAGPRA Review Committee and
18 also serving as the former Chair of the NAGPRA
19 Review Committee. I'd like to recognize on behalf
20 of the Review Committee someone very special,
21 Armand Minthorn. Welcome, Armand. Stand up,
22 Armand. *Gunalchéesh*.

23 **ADOPTION OF AGENDA**

24 ROSITA WORL: I'd also like to again welcome
25 you to our Committee. We do have an agenda, and we

1 also have a public comment period. I'd invite
2 those who have not signed up but who wish to speak
3 to the Review Committee, express their concerns or
4 issues with NAGPRA, if they would sign up with
5 Sherry Hutt and be able to participate during the
6 public comment period. So first of all, I'd like
7 to – we have distributed, we've instituted a new
8 process of making all of the material available to
9 the public on the NAGPRA website, and we now have
10 the agenda before us. And I'd like to ask, what's
11 the wish of the committee?

12 **REVIEW COMMITTEE MOTION**

13 ALEXANDER BARKER: I move to adopt the agenda.

14 ROSITA WORL: We have a motion to adopt. Is
15 there a second?

16 MERVIN WRIGHT, JR.: Second.

17 ROSITA WORL: We have a motion made and
18 seconded. Any comments? Hearing no comments, all
19 those in favor of adopting the agenda, please
20 signify by saying aye.

21 SONYA ATALAY: Aye.

22 ALEXANDER BARKER: Aye.

23 LINDALEE FARM: Aye.

24 ERIC HEMENWAY: Aye.

25 ADRIAN JOHN: Aye.

1 ROSITA WORL: Aye.

2 MERVIN WRIGHT, JR.: Aye.

3 ROSITA WORL: Those opposed say no.

4 The agenda is adopted.

5 Now if I may, I will turn it over to Sherry
6 Hutt, who is serving as our DFO, Designated Federal
7 Official. Sherry.

8 **COMMENTS BY DESIGNATED FEDERAL OFFICER**

9 SHERRY HUTT: Thank you, Madam Chairman, and I
10 apologize, having adopted the agenda we have one
11 additional agenda item, tomorrow morning at 8:40
12 when we discuss regulations –

13 ROSITA WORL: We can do that tomorrow, Sherry.

14 SHERRY HUTT: We can – we can add that
15 tomorrow?

16 ROSITA WORL: Yes.

17 SHERRY HUTT: That will be fine.

18 Well, Madam Chairman, I greet you for the
19 first time acting as DFO, although the – by
20 regulation, the Manager of the National NAGPRA
21 Program is the DFO, and I'm pleased to serve in
22 this capacity. I had appreciated the service of
23 David Tarler as DFO, so that as one who makes many
24 presentations to you I would not also be running
25 the meeting. As manager, I make decisions as to

1 sort of priorities in the program, and one of the
2 major priorities of the National NAGPRA Program is
3 the drafting, the redrafting of 43 C.F.R. Part 10,
4 the NAGPRA regulations. And anyone who knows David
5 Tarler knows he is a scholar and certainly the most
6 capable person here today who could do this so -

7 ROSITA WORL: Excuse me, Sherry. I'm just
8 wondering. I know our mics, you have to speak
9 directly into the mic, my concern that people in
10 the back may not be able to hear.

11 SHERRY HUTT: Can you hear - is it - I can't
12 get it any closer. Is it on? Okay.

13 I made a decision that the regulations, being
14 the most important thing that the National NAGPRA
15 Program does in giving guidance to constituents,
16 were a matter that needed complete attention. And
17 so I have asked David to undertake that redraft.
18 It is an arduous process. It will be a lengthy
19 process. There will be much consultation and
20 input, and we've already begun that. So in order
21 to enable that to be done it became apparent that I
22 needed to take some other duties off his schedule.

23 So I'm here today, both as the DFO under the
24 regs and having assigned staff, because some people
25 think that the National NAGPRA Program is a very

1 large – it is a large program but with a small
2 staff, so we are trying to meet your needs as best
3 we can. So I will amble my way through being your
4 DFO as well as your manager, and we'll try to keep
5 the record clear as to what capacity I'm speaking
6 as we go – as we go through the day.

7 But I'd like to introduce the people that are
8 here, and I'd like the folks in the room to know
9 that, especially for the public comment period, if
10 anyone needs to contact me, because they'd like to
11 be on the public comment period, and if I'm engaged
12 in something, they can also contact Melanie
13 O'Brien. Melanie, would you stand, I'm going to
14 embarrass you.

15 Melanie O'Brien is our new Notice Coordinator.
16 She began with the National NAGPRA Program right
17 after the first of the year, and many of you got to
18 know her yesterday if you were here for the
19 training. So I'm so pleased that Melanie has
20 joined the program. As you know, Jaime Lavallee
21 left to go back to school to get a doctorate of
22 law, in law. And during the interim between the
23 time she left and the time that Melanie began,
24 Alayna Rasile, who is at the back of the room and
25 signed you all in and was in the training

1 yesterday, picked it up. So we're pleased that
2 from Jaime to Alayna to Melanie, we have had no
3 break in the publication of notices. So I'm
4 pleased to have the staff here today.

5 Also to my left, Carla Mattix from the
6 Solicitor's Office, Fish and Wildlife and Parks,
7 who you know is with us and advises, and Stephen
8 Simpson from Solicitor's Office, Indian Affairs,
9 with us today. So those are the staff and counsel
10 who are with us.

11 I'd also like to take this opportunity to - a
12 couple thank yous. One is to Kathy Hansen of the
13 National Park Service, who is in their Human
14 Resources Division and is a trainer. She wished
15 that she could stay at the meeting today. She had
16 given the training with the Review Committee
17 yesterday, but she is much in demand as an
18 executive trainer by high-level folk at the
19 Department of the Interior. So we're pleased that
20 she was with us yesterday to work with you all and
21 now she is back on her way to DC to engage in
22 training for folks at the Department, so we want to
23 give her a special thank you.

24 I'd also like to extend a thank you to
25 Christine Landrum and all of the folks at the

1 National Park Service Intermountain Regional
2 Office, who hosted the Review Committee last
3 evening and made them feel welcome. And I'd also
4 like to thank those people who assist us at all
5 times in our training, Megon Noble from the Burke
6 Museum, Christine Landrum, and Theresa Pasqual from
7 Pueblo of Acoma, who have assisted us in training
8 and gave training yesterday.

9 I'd like to report to the Review Committee,
10 because you choose the venues to enable you to
11 reach out to the NAGPRA constituencies. We had
12 almost 90 people present for the training
13 yesterday. That's a large number by any standards.
14 And more impressive, in my way of thinking, is that
15 two-thirds of those people who signed up were
16 first-time trainees. And being here and reaching
17 out to folks in the area has certainly been
18 successful. This is a good venue choice. Today, I
19 can report that you have 70 people signed in so far
20 for this meeting, and more have been coming in
21 since. So we are — we are well attended this
22 morning.

23 And, Madam Chair, I think that we — the only
24 other thing I would report, as always, we operate
25 under a Charter, and that Charter is in effect to —

1 Charters are multi-year documents, and the one that
2 you've been operating under for the last couple
3 years is in effect until November 24 of this year.
4 So we'll be getting – in spite of the election
5 cycle, national election cycle, we'll be getting to
6 work on the agenda – or the Charter for the next
7 meeting as well.

8 Madam Chair, thank you. I think that
9 concludes my opening comments.

10 ROSITA WORL: Thank you very much, Sherry. And
11 on behalf of the Review Committee, would you extend
12 our greatest thanks to David Tarler for his service
13 as the DFO, and maybe we'll see him again in the
14 future. And also we'd also like to extend our
15 thanks to Jaime Lavallee for her service, and then
16 also welcome Melanie O'Brien. Welcome, Melanie.

17 MELANIE O'BRIEN: Thank you.

18 ROSITA WORL: So if we may, we'll go ahead with
19 our agenda and hear the report from Sherry Hutt as
20 Manager of the National NAGPRA Program and also
21 Melanie O'Brien, the report on the National NAGPRA
22 Program report on the implementation of NAGPRA in
23 mid-year FY 2012.

24 **REPORT: NATIONAL NAGPRA PROGRAM REPORT ON THE**
25 **IMPLEMENTATION OF NAGPRA IN MID-YEAR FY 2012**

1 **WEB NEWS AND DATA MANAGEMENT**

2 SHERRY HUTT: Thank you, Madam Chairman. As
3 you know, the mid-year report is a brief document,
4 just to give you an update on how things are going
5 thus far. And I'd just like to run through a few
6 things. It has been my pleasure to give you
7 monthly updates, but to recap and to give you some
8 of the latest news, the National NAGPRA Program is
9 now live on YouTube. We are branded, and you can
10 go into YouTube on NAGPRA, and at that location you
11 will find all of the training videos. If you
12 recall, the training videos, in which many of you
13 participated and many of the folks here
14 participated, were on disc and we were looking for
15 ways to reach out to the public with training, so by
16 going to YouTube they are now on demand. And the
17 Department of the Interior is taking advantage of
18 YouTube. We're one of the first to have done that.

19 Credit goes to Mariah Soriano, in the National
20 NAGPRA Program for getting us up on YouTube and
21 accomplishing that feat. She is also the one who
22 you know has posted now seven databases and is
23 pleased to report that the updates are going well,
24 and that the summaries database is audited from old
25 documents. We have — you have heard from folks at

1 various meetings about how well National NAGPRA
2 manages data. We inherited, you know, all those
3 years of data, not all of which were entered into
4 an electronic system. In fact, Mariah is the one
5 who oversaw the contract to update the system. She
6 has just updated – put another update on the system
7 to secure that data from cyber entry, and in doing
8 so we will be transferring to a new server that we
9 hope is more secure. We've had comments to the
10 Review Committee about whether the server sometimes
11 goes down. The only time the server goes down now
12 is for maintenance and updates, that sort of thing.

13 But there has been a project in the office
14 where Mariah has supervised Alayna Rasile, who is
15 here. Alayna has – together they have gone through
16 all the summaries. Alayna has digitized all the
17 summary documents, and in doing so, she also
18 audited them against our internal records to make
19 sure everything was complete. And now we're
20 instituting that as to inventories. We believe
21 that hopefully by the end of the summer, certainly
22 by the end of the calendar year, we will have gone
23 through 20 years of documents and can report to you
24 that they've all been touched, audited, put up on
25 the database and that our records are fully

1 complete.

2 The digitizing is part of a larger project
3 that I would like to report to you and you'll be
4 hearing more of it on the agenda, and that is the
5 archiving project. We are - all Federal programs
6 archive documents at the National Archives and
7 Records Administration, and they do so on a certain
8 schedule. National NAGPRA has never done that. So
9 we are undertaking the archiving and by keeping the
10 digitized records in house, we can eliminate having
11 the paper documents on hand. So they go to the
12 archives. After they spend four years at the
13 archives, they're then publically accessible. So
14 anyone wanting to do research on NAGPRA can simply
15 go to archives and retrieve that information, all
16 of the information.

17 We hope to have the summary data and the
18 inventory data that is digitized eventually
19 accessible online. We've talked about that a
20 little bit before. Consultation may be appropriate
21 before such documents are put online to make sure
22 that we don't have sensitive information that
23 should not be generally publically accessible. But
24 certainly everything we do in this regard is to
25 support consultation. So that's - Mariah wears

1 those many hats. She is also busy planning your
2 next meeting in Hawaii and finding the location.

3 On notices, I'm going to come back to Melanie
4 in a moment.

5 **GRANTS**

6 SHERRY HUTT: As to grants, Sangita Chari, as
7 you know, is our Grants Coordinator. Next week is
8 the grants panel. The grants panel will meet in DC
9 and prioritize all of the applicants for
10 competitive grants. The noncompetitive
11 repatriation grants continue to come in strong, and
12 those are grants to fund the taking the ancestors
13 home, and we're really pleased to see the growth in
14 those. At the end of the year, I'll have better
15 numbers for you on how many grants and how much in
16 funds went to that.

17 Next week – two weeks from now, there will be
18 a training on grants here in Santa Fe, at the
19 Intermountain Regional offices that the Review
20 Committee was at last night. I mention this
21 because registration is still open. We don't have
22 a large class, and anybody here in the building who
23 thinks they would like to come back and attend that
24 class, please let us know, register through the
25 National Preservation Institute, NPI. I was really

1 pleased to see that the first registrant for the
2 class was one of our Review Committee members,
3 Mervin Wright. So we appreciate your enthusiasm
4 for the grants classes, and all of the classes that
5 we have been doing.

6 **REGULATIONS**

7 SHERRY HUTT: I commented to you on the
8 regulations, and we'll have a regulation item later
9 on the agenda. David Tarler is working on the
10 regulations.

11 **CIVIL PENALTIES**

12 SHERRY HUTT: And civil penalties, in civil
13 penalties, we had funds for an investigator. We
14 put out a contract. The contract – the successful
15 bidder on the contract was someone whom you know,
16 Shannon Keller O'Loughlin. She is also an
17 attorney. Anyone who is an attorney that we might
18 hire, even in a non-legal position, needs to be
19 reviewed by the Department counsel. And they
20 determined that she would be an analyst, not an
21 investigator. So she is working in the office with
22 David.

23 David is still the Civil Penalty Coordinator,
24 and complaints still go to David, and he is still
25 working through the paperwork on all of that, in

1 addition to writing regs, but she is working
2 diligently to go through the many years of civil
3 penalty allegations so that we can really see what
4 we have. Keep in mind, as manager, we keep a wall
5 between that document – between the civil penalties
6 and what we do in training and compliance
7 documents. But she is diligently working to sort
8 through all of the civil penalties to see what we
9 can do to get some of those civil penalties
10 resolved.

11 **TRAINING**

12 SHERRY HUTT: In other news, we have been doing
13 training. We've had almost a thousand people
14 trained so far at the midpoint of the year.

15 And a number of other things are in the
16 report. I really appreciate that we're able to put
17 the report up online and give it you before the
18 meeting. So before I turn it over to Melanie in
19 just a second, do you all have any questions,
20 thoughts, comments, suggestions, or additions to
21 the types of things that we report to you all? Do
22 you have any comments on the midyear report?

23 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

24 ROSITA WORL: Do we have any comments? Merv.

25 MERVIN WRIGHT, JR.: Yes, thank you for the

1 report. I want to be leaning forward here at the
2 table, but in looking at the report, one of the
3 things that I've been looking for are the number of
4 collections that are not being processed for
5 repatriation. I mean, we see the Notices of
6 Inventory Completion. We see the Notices for
7 Intent to Repatriate, but we don't see the
8 collections that remain with the agencies or the
9 institutions. And I think it's fair to Congress to
10 inform them that there are numbers -- there's
11 volumes of collections that are not being
12 repatriated, for whatever reason, and I think it
13 would be important to show that number also.

14 SHERRY HUTT: Thank you. In terms of
15 collections, in NAGPRA, of course, we get two
16 different compliance documents. We have an
17 inventory and a summary. The inventory is an item-
18 by-item list of the individuals and any associated
19 funerary objects with those individuals. We have
20 item-by-item indicated those on the public access
21 website databases. We have the culturally
22 affiliated database, and the culturally
23 unidentifiable database.

24 When notices are published, there's a
25 reference there so you can see that this individual

1 has been resolved, and as we receive information
2 that the individual in the notice has been
3 repatriated, we include that as well. So for human
4 remains, for individuals, you can go on – anyone
5 can go on the website and see the individuals not
6 addressed and the individuals who have been
7 addressed. And in our final – in our end-of-the-
8 year report I'll take that to heart, and see if we
9 can't accumulate more statistics and more charts
10 and show you how things are progressing.

11 As to summaries, it's different, because those
12 are generalized statements of the nature of the
13 collection. So under the current regulations,
14 museums and Federal agencies are not required to
15 submit an itemized list. Some do, but many do not
16 and they're not required to do so. So while we can
17 have a database that indicates which museums report
18 collections from which tribes, and a tribe can go
19 on, put in their tribal name in the drop-down box
20 and it will show all the museums that report having
21 collections attributed to their tribe, the extent
22 of those collections and the nature of those
23 collections is something that we currently by law,
24 by reg, we do not have the capacity to report to
25 you. So that's something that we might think

1 about, how we would capture that information and in
2 what ways.

3 Let me at this time turn it over to Melanie
4 because – Yes?

5 ROSITA WORL: Did she – was she going to
6 respond further on this question?

7 SHERRY HUTT: No. I was going to have her talk
8 on notices. Is there anything else?

9 ROSITA WORL: All right. Let's hold off here.
10 Merv, did you have any follow-up questions?

11 MERVIN WRIGHT, JR.: I think I'll save that for
12 later.

13 ROSITA WORL: Okay. Any other questions?
14 Sonya.

15 SONYA ATALAY: Yes, I have a question. Thank
16 you, Sherry Hutt, for the report. My question is
17 regarding civil penalties, can you hear me okay?
18 Okay. My question is regarding civil penalties,
19 I'm wondering when – currently, I know that David
20 Tarler is working on civil penalties, but since we
21 don't have at this time a full-time investigator
22 regarding civil penalties, I wonder what the
23 specific plans are to rectify this situation and,
24 for example, how many cases can the committee
25 expect to be investigated by the end of the fiscal

1 year, or if you could just give a report on the
2 plans for a civil penalties investigator?

3 SHERRY HUTT: Thank you. That's a fair
4 question. And the way we divide that, and David as
5 the coordinator takes the results of the
6 investigation, prepares the materials for the
7 Assistant Secretary, briefs them, and works the
8 cases through once they're made. Without an
9 investigator, we can't investigate. We had funds
10 to hire an investigator but what we have is an
11 analyst, not an investigator. Dealing with that
12 situation is — that's the sort of thing that does
13 keep me awake nights. I'm looking for funds,
14 looking for funds in the Department, looking for
15 alternative means in the Department to have an
16 investigator.

17 As you know, we had law enforcement from the
18 National Park Service provided to us to do
19 investigations, and that was a good thing because
20 he was able to accomplish investigations. But
21 because it wasn't an ongoing routine job, we also
22 didn't have the kind of reporting capability and
23 administrative internal capability. So with
24 Shannon O'Loughlin we are accomplishing the sort of
25 administrative internal document control, but we

1 don't have anyone flying out and making contact
2 with museums, and we will not have until we are
3 able to secure someone in the Department to do so.
4 Not for want of trying, it's an ongoing issue.
5 It's an ongoing discussion. It's one that I take
6 up with the Assistant Secretary when I have the
7 opportunity to do so.

8 Yes, and let me — Carla had some —

9 CARLA MATTIX: And just to clarify, because it
10 may not be obvious to you, there are many hiring
11 statutes and laws in the Federal Government, and
12 just because funding might be available — there's a
13 distinction between contractors and employees in
14 the Federal Government and what types of duties
15 they can undertake. And for the investigator
16 position, it's an employee-type position, not a
17 contractor position, so that's another issue that
18 we're working through, as far as being able to
19 figure out how to hire somebody.

20 ROSITA WORL: Did you have a follow-up — go
21 ahead, Sonya.

22 SONYA ATALAY: Yes, I do. On another topic, I
23 wonder if you could provide us with an update on
24 the dispute notices from the Alaska disputes? It's
25 been about a year and a half, and we have still not

1 seen those dispute notices published, and I just
2 wondered if we could have an update on that. Thank
3 you.

4 SHERRY HUTT: Yes, thank you. The dispute
5 notices are published pursuant to policy of the
6 Review Committee. We held off doing it in the
7 Program until we had input from the Department and
8 the Department Ethics Office. I received guidance
9 last evening, and I need to review that. I think
10 it's safe to say that what we're talking about is
11 the November '10 – November 2010 meeting.

12 And first of all, let me say a couple of
13 things. The Program referred the matter to
14 Departmental Ethics because of concerns that were
15 raised during the meeting. No museum or individual
16 lodged an ethics complaint. There was an
17 investigation regarding the Review Committee and
18 gifts. That investigation is concluded. The
19 Review Committee members are not under
20 investigation. There is no investigation of the
21 Review Committee members. That matter concluded,
22 and that conclusion is that there is no wrongdoing.
23 The gifts were promptly – the gifts were minor and
24 promptly returned, and the matter concluded with
25 the finding that there was no outstanding

1 impropriety and none of the – none of the members
2 of the Review Committee are under any type of
3 investigation or cloud, and I must clear that up at
4 a minimum.

5 As to other concerns with regard to the
6 process of the dispute and occurrences, that is not
7 resolved. That matter I sought advice on prior to
8 publishing the notice. Concerns – as both the DFO
9 and as the Program Manager, the integrity of the
10 committee is an – the oversight of that is my
11 obligation. And I have received, as I said, last
12 evening some guidance. I need to discuss that
13 guidance with the Assistant Secretary, and then
14 we'll make further determinations on the
15 publication of the findings of the Review Committee
16 from that dispute.

17 However, having said that, the Review
18 Committee decisions are final when voted on. They
19 are recommendations to the parties. Therefore, the
20 parties can act or not act on those
21 recommendations, as they choose, once the Review
22 Committee has voted. Publication in the *Federal*
23 *Register* documents those decisions, but is not
24 required for purposes of your decisions to be
25 effective as advice given to the parties. And let

1 me just ask counsel if I properly stated that.
2 Okay, they're agreeing yes. So that - that is
3 ongoing.

4 Now, we do have an update. One of the matters
5 on the post - has concluded. The matter with the
6 Alaska State Museum has concluded by private
7 agreement between the claimants and the museum.
8 And I - we received a comment from the museum, and
9 I'd like to communicate - we were asked to
10 communicate this to the committee, and I think this
11 would probably be an appropriate time to do so.

12 "Please communicate to the committee that the
13 negotiations between the clan and the museum were
14 very professional and respectful. We think this
15 would be a good thing for the committee to hear.
16 We think we've built a strong foundation of good
17 will and trust with the clan, which we believe is a
18 goal of the NAGPRA legislation." So that dispute
19 has resolved. Thank you.

20 ROSITA WORL: Go ahead, Sonya. You have
21 further follow-up.

22 SONYA ATALAY: I have just a list of two more
23 short -

24 ROSITA WORL: Go ahead. Go ahead. No,
25 absolutely. It's important that we review this.

1 SONYA ATALAY: Thank you. The next question I
2 have, also following up on the report, relates to –
3 it's in the section between Federal agencies and
4 putting notices, particularly things that were
5 listed in the GAO report. It's listed here in the
6 report that there may be duplication of reporting
7 for collections that are within Federal agencies
8 and their repositories. And I'm also wondering if
9 you have any information or if you might be able to
10 give us some kind of update about how these
11 collections may actually also be underreported.

12 We've heard from tribes and Federal agencies,
13 particularly following the GAO report, that there
14 can be some difficulties in putting the collections
15 in notices, and that one of the barriers that we're
16 seeing is that communication may not be – it's not
17 required to take place between Federal agencies and
18 the repositories that hold, in some cases, large
19 amounts of these collections. And I'm just
20 wondering if you have any information that you
21 could provide about that or updates about what
22 those numbers might look like and any ways that the
23 Review Committee may be able to assist with that
24 type of barrier that Federal agencies are having
25 with repositories.

1 SHERRY HUTT: You've asked a number of good
2 things. Let me try and tackle the few. In the
3 mid-year report – is it on page 5 where we have all
4 the statistics – you will see I added a line that
5 was not in there to speak to that point. And that
6 is we have some duplication in the sense that we
7 would have total number of human remains, human
8 remains that have been moved from unidentifiable to
9 affiliated, and then we have the total. So I
10 wanted to make real clear that weren't double
11 counting. The total number of Native American
12 human remains reported as being in Federal agencies
13 and museum collections is – what is it – 175,650.
14 So that is the total of the Native American human
15 remains within the purview of National NAGPRA and
16 the agencies and the museums that report to us. So
17 that 175 – almost 176,000 Native American human
18 remains. And of those, about a fourth have been
19 resolved in notices.

20 Now, you asked additionally about repositories
21 and Federal agencies. Museums – and we say
22 "museums" in the greater scope. They could be
23 universities or state repositories. Those who have
24 over the years received or curated, cared for,
25 Federal collections do not have, under the current

1 regs or law, an obligation to tell the Federal
2 agency we have your things. The law requires that
3 those with possession or control create an
4 inventory. So the Federal agencies, then, are in
5 the position of continually checking to see if any
6 of those 1,072 museums who report to us have their
7 collections or might have their collections. It's
8 a painstaking, time-consuming task, which many of
9 the Federal agencies undertake on a regular basis.

10 You will hear from the Federal agencies. In
11 the agenda, you'll see that a number of Federal
12 agencies have come today to talk to you to give you
13 the information that you might want to talk about
14 with them. And so as to that task and that
15 circumstance and how you might assist to address
16 that and help them in their work, then you might
17 wish to address that to the Federal agencies who
18 are on your agenda.

19 And I would just like to say that, as you look
20 at your agenda you'll see that it's full of
21 presentations. You have no disputes, no requests
22 for dispositions of CUI, and yet, you have a very
23 full agenda of people who have come here to present
24 on their successes, their barriers, their issues to
25 receive your guidance and to really take advantage

1 of this as a forum. And on a note as your DFO, I
2 think that's heartening that this committee has
3 that stature and can provide that kind of forum,
4 because the issues you're going to hear in the next
5 two days will be some really profound and highly
6 substantive matters, and they go right to what
7 you're talking about. So there will be Federal
8 agency people here to address that far better than
9 I can.

10 ROSITA WORL: Go ahead, Sonya.

11 SONYA ATALAY: Thank you, Madam Chair. My
12 final question is regarding Native American
13 Consultation Database. We've heard, over the last
14 years that I've been on the committee, questions
15 about that, particularly from museums and Federal
16 agencies who are trying to do their very best to
17 comply with the law and who are utilizing the
18 database, particularly the database of the Tribal
19 Leaders Directory. We've heard that oftentimes
20 that information is not up-to-date, and we
21 understand why, because there's turnover within
22 tribes. And I just wanted to ask if we might think
23 about or what National NAGPRA has - might expect to
24 do in order to try to alleviate that problem and
25 keep that - how often - first of all, how often is

1 that database checked on and kept up-to-date, and
2 then what else we might do to try to help with
3 that, since that's such a critical point in terms
4 of facilitating the law.

5 SHERRY HUTT: We receive updates from tribes on
6 an ongoing basis, and as they are received, the
7 information is updated. For the tribes, we refer
8 to the BIA list, but that is the tribal leaders.
9 Then we want the tribal NAGPRA contacts. That's a
10 designation the tribe makes, so we need to receive
11 a document from the tribe, by the authority of the
12 tribe, tribal letterhead, to put that up on the
13 website and represent that individual as a NAGPRA
14 contact. So to the extent tribes send us that
15 information, it's acted on upon receipt. So to
16 that extent it's updated.

17 We will put out requests to update
18 periodically, to say, you know, if you haven't done
19 this in a while, make sure it's updated. And any
20 other guidance on that that you might have as to
21 how we might reach out more effectively to keep it
22 updated on a more ongoing basis, we are certainly
23 pleased to receive and act on that – those
24 suggestions.

25 SONYA ATALAY: Okay. My only comment about

1 that is that I have talked to several museums who
2 are doing fantastic work in terms of creating their
3 own databases and with current information. And I
4 was just thinking – this is why I asked the
5 question, thinking wouldn't it be fantastic. And
6 multiple museums are doing this, so I was just
7 trying to think about ways that we might kind of
8 bring that information all together, compile it,
9 and then present it in some way so that the work,
10 the important work that museums are doing on this
11 can be utilized by others.

12 SHERRY HUTT: If those – there are museums who
13 compile those databases for their use for the
14 region in which they are consulting, and they have
15 human-to-human contact. And so it's like their
16 phone contact, or whatever, their email contact.
17 On a national basis, we are not that informal. So
18 the – we could not, let's say, reach out to a
19 museum and take their list and add it to our list,
20 because it wouldn't have come as an official
21 document from the tribe. So all we can do in that
22 regard is request that museums, perhaps, encourage
23 those people to also get the information to us so
24 that it would be more broadly available. Certainly
25 the museum-centric or regional-centric

1 communications are strong, because they're on the
2 ground and they're doing that consultation. But we
3 are – we are not in a position to have that direct
4 contact, so we're – we're dependent upon receiving
5 that information from tribes.

6 ROSITA WORL: Thank you. Anything further,
7 Sonya?

8 SONYA ATALAY: No, thank you very much.

9 ROSITA WORL: Thank you for those questions and
10 comments. They're very helpful for us.

11 Do any of the other committee members have any
12 questions or comments on the first part of the
13 report?

14 MERVIN WRIGHT, JR.: I have just one comment.

15 ROSITA WORL: Go ahead, Mervin.

16 MERVIN WRIGHT, JR.: This is just a general
17 observation. A part of the problem that a lot of
18 us tribes face out there is the term "culturally
19 unidentifiable." In here, in your report, I think
20 it deserves clarification. It's either Native
21 American or it's not Native American. If it's
22 Native American, then it is culturally
23 identifiable. I would say that the – you know, the
24 United States and the National Park Service needs
25 to take a position on this and make it very clear

1 to everyone that it's either Native American or
2 it's not Native American, because I think when you
3 use the term "culturally unidentifiable" it's a
4 contradiction in itself when you use it in this
5 manner.

6 We're seeing a lot of the arguments today from
7 the scientific community that are saying that
8 they're not Native American, but at the same time
9 they're saying they're culturally unidentifiable.
10 And so if the burden of proof is going to be
11 applied, then I think the National Program needs to
12 take a position either way to say it's either
13 Native American or it's not Native American.

14 ROSITA WORL: Sherry, did you have any comment?

15 SHERRY HUTT: Well, I appreciate the statement.
16 We - I use the CUI and the CA shorthand, but it's
17 culturally affiliated Native American human remains
18 and culturally unidentifiable Native American human
19 remains. I understand Mr. Wright's point to be
20 that it's very difficult not to have some tribal
21 identification when you've determined Native
22 American.

23 And in training, we do our best. We actually
24 have specialized training in decision making in
25 NAGPRA. It's taught by Mary Anne Kenworthy, who is

1 an attorney with the Bureau of Indian Affairs, and
2 Megon Noble from the Burke Museum. And they take
3 an entire day to go through the types of
4 consideration that would go into the initial
5 determination, which is totality of the
6 circumstances on the facts, not the preponderance
7 of the evidence that you get into when you have a
8 dispute. And the terms that we use, by the way,
9 are those in the statute, those given to us by
10 Congress.

11 The way we in the Program approach it is we
12 feel the best approach is good education on the
13 actual tools that Congress provided, which we feel
14 can be very effective if you understand them and
15 use them, so our approach has been to address the
16 matter through education.

17 ROSITA WORL: I might also note that the Review
18 Committee does prepare a report to Congress on an
19 annual basis, and perhaps that might be something
20 that we might consider as a discussion point in
21 preparing a report and how we might want to address
22 that issue. Are there any other comments or
23 questions on the first part of Sherry's report?

24 If not, I have one question. Insofar as a
25 civil penalties plan, could you elaborate further

1 on the investigator and the analyst? What's the
2 difference between those two? How the analyst
3 might enhance — I'm assuming it would enhance the
4 work of an investigator, if we had an investigator.

5 SHERRY HUTT: I think the difference is that
6 the analyst is, first of all, going through all the
7 files to make sure we know what we have, the aging,
8 the counts. There are some that can be resolved
9 just from looking through the files and looking at
10 our files and working with David Tarler, and so to
11 the extent those can be resolved and managed in
12 house, that's where the analyst comes. The
13 investigator actually went out to museums and
14 looked at the collection, talked to the museum
15 management. And that's an investigative role that
16 is one that we're hearing is what's called
17 inherently governmental, in other words a
18 Government employee. So that's the type of sort of
19 argument I make when I go forward to increase the
20 staff of the program.

21 Keep in mind, I'm one of many program managers
22 throughout Interior looking to get things done, and
23 so I take the failure on me if I've not made my
24 case strongly enough, but I certainly am trying and
25 will continue to express your thoughts to see if we

1 can't get this resolved.

2 Generally, the leadership at Interior
3 understand civil penalties and agree that it's
4 important. The question is how we obtain an
5 investigator. And we had very generous support
6 from law enforcement, but as budgets in the Park
7 Service were tightened they didn't have someone to
8 free up to give us, and that's basically what it
9 came down to, so - and the Department of the
10 Interior does not have its own investigators.

11 We work very closely in this regard with a
12 sort of sister program in terms of investigation.
13 That's the Indian Arts and Crafts Program, which is
14 in Interior. It's an Interior program. They have
15 an investigative need and they're working with
16 investigators. So our conversation with them is if
17 we are able to get an Interior investigator who can
18 work on their programs, work on NAGPRA, then we
19 will have this inherently governmental
20 investigative position assigned on a regular basis
21 and investigating and making cases. That's the
22 ideal circumstance. That's what we've been working
23 for.

24 The cooperation of the Indian Arts and Crafts
25 people, Meredith Stanton, are wonderful. They work

1 with us on training. They work with us in many
2 ways. And we're just trying rather diligently, if
3 I may say, to try and get this to happen. So yes,
4 it's an issue; it's a work in progress.

5 ROSITA WORL: Thank you, Sherry. Again, this
6 is an issue that the Review Committee has
7 highlighted as a priority issue. We've included it
8 in our report to Congress, and I suspect we'll have
9 to continue to highlight that as an issue of
10 concern for the Review Committee.

11 I have one other question, and this is an
12 issue that has been brought to a number of the
13 Review Committee members, and that is the concern
14 or I don't know if it was in reality, but we –
15 there was comments made that when the Review
16 Committee met in November, on that November 10-11
17 meeting, that our Charter had expired. That it
18 expired before – the old Charter had expired before
19 the date of that November meeting, and it had not
20 been reviewed – renewed until subsequent to that
21 NAGPRA Review Committee meeting. That's – you
22 know, that comment has been made to the Review
23 Committee members, and I'm wondering if we could
24 clarify that.

25 SHERRY HUTT: The Charter is accepted in the

1 Department, it's signed, and then it is published.
2 It was not published until November 24, 2010, but
3 it was approved by the Secretary prior to that
4 time. So I have no information that you were out
5 of Charter at that time. Counsel have any other
6 illumination on that point?

7 CARLA MATTIX: We did not receive any
8 information from the National Park Service office
9 that handles all of the National Park Service FACA
10 committees that there was any problem with a lapse
11 in the Charter for that meeting. So that's as much
12 as we know.

13 SHERRY HUTT: And when she's saying that, it's
14 the — it's not just this office, National NAGPRA.
15 It's the Policy Office of the National Park Service
16 that deals with all FACA committees. So the
17 information we had is it's approved, it just isn't
18 published. So if there's any concern about that,
19 please know you're okay. The publication date,
20 though, is the one from which we count the two
21 years, but it does not mean that you weren't
22 approved to go at the time that you were there.

23 ROSITA WORL: Just to clarify, so there was no
24 lapse in the Charter when the committee met?

25 SHERRY HUTT: Correct.

1 ROSITA WORL: Okay. Thank you. Are there any
2 further comments or — go ahead, Merv.

3 MERVIN WRIGHT, JR.: Just a comment regarding
4 the statement made about the fact that there's no
5 obligation by the law that requires museums to
6 notify Federal agencies of their control of certain
7 collections, and this is more of a comment maybe
8 towards the committee, that we should be looking at
9 making that requirement established in the law
10 because it is a problem that at least those of us
11 in Nevada we're experiencing with certain
12 collections that were taken from Federal lands.
13 And the — when the inventories are completed, the
14 agencies have no knowledge that the inventory is
15 completed even though they do not — the museums may
16 not have legal entitlement over the control and
17 completion of those inventories. And so I think we
18 need to make that a legal obligation that museums
19 notify agencies of those collections that are under
20 Federal control.

21 (Portion of comment inaudible.)

22 ROSITA WORL: — the first part of your report,
23 so let's continue with your report.

24 SHERRY HUTT: All right. Let me turn it over
25 to — let me have you hear from Melanie O'Brien.

NOTICES

MELANIE O'BRIEN: Thank you, Sherry. It's my honor to tell you an update on notice publications at the National NAGPRA Program. In our mid-year report as of March 30th, we had published 80 notices in Fiscal Year 2012. Since that report, we have published another 33, bringing the total so far for Fiscal Year 2012 to 113. The total for last year Fiscal Year 2011 in total was 109, so we're on target to publish over 200 notices this year. It's a significant increase. That is the direct result of the increase we've had in notices coming in from institutions and Federal agencies. The submission of notices is up 50 percent over this same time last year, and the processing of notices has been increased. In addition, the number of notices that are being published under the culturally unidentifiable rule has increased significantly as well. At the mid-year point, we had 29 notices published under that rule, and that's an increase over last year, Fiscal Year '11, where a total of 27 were published. So we're already exceeding that marker from last year.

ROSITA WORL: Any questions or comments on Melanie's report?

1 For the benefit of those who arrived after we
2 made our initial announcement, we are inviting the
3 public to make comments on any issues, successes,
4 barriers you might have had with NAGPRA, and
5 Melanie is the person that you need to sign up
6 with. And we invite you and encourage you to make
7 comments.

8 Go ahead, Sherry.

9 SHERRY HUTT: Madam Chair, thank you very much
10 for the opportunity to give you that report. That
11 concludes the National NAGPRA Program report at the
12 mid-year.

13 ROSITA WORL: Thank you very much, Sherry. I'm
14 assuming we don't have any further questions or
15 comments.

16 If not, let's go ahead and move on to our next
17 agenda item. And if we may, let's invite our – the
18 Colorado lands group that will be here to talk
19 about the Colorado Lands Reinternment and
20 Repatriation, let's have the workgroup, Terry
21 Knight, from the THPO, Ute Mountain Ute Tribe, and
22 also Ernest House, Jr., from the Colorado
23 Commission of Indian Affairs, if we may have them
24 come forward please.

25 And if the Review Committee can welcome you

1 and thank you for coming here, and for the record
2 if you will introduce yourselves as you speak or
3 you may go ahead and introduce the whole group.

4 **PRESENTATION: COLORADO LANDS REINTERMENT AND**

5 **REPATRIATION WORKGROUP**

6 **PRESENTATION**

7 PATHIMI GOODTRACKS: Good morning. My name is
8 Pathimi Goodtracks, and I am here representing the
9 Southern Ute Tribe. I am a tribal council member.

10 ROSITA WORL: Welcome.

11 BRADLEY HIGHT: Good morning. My name is
12 Bradley Hight. I'm Vice-Chairman, Ute Mountain Ute
13 Tribe.

14 TERRY KNIGHT: Good morning. I'm Terry Knight,
15 the Tribal Historic Preservation Officer for Ute
16 Mountain Ute Tribe.

17 ERNEST HOUSE, JR.: Good morning, Ernest House,
18 Jr., Executive Secretary for the Colorado
19 Commission of Indian Affairs.

20 ROSITA WORL: Welcome. Thank you.

21 BRADLEY HIGHT: Good morning, panel. Good
22 morning, ladies and gentleman. You know, I'm here
23 to represent the Ute Mountain Ute Tribe in a good
24 way that, you know, I'm really proud of our tribe,
25 of what we're doing, we support reburial (portion

1 of comment inaudible). You know, when I was a kid,
2 I was going to high school and friends of mine were
3 talking and they said, what is going on here? Why
4 are these people going to Mesa Verde to look at
5 this body? Who is that body? And then they gave
6 that body a name, Esther. Our people was
7 displayed. God's child was displayed in front of
8 the whole world. The Ute Tribes got together and
9 said, no, we don't want that. We need that body to
10 be buried to continue its journey to the Creator.
11 And later on they did, but come to today, we find
12 out that that body has never been buried.

13 So you know, the Ute Mountain Tribe was
14 working with the ALP, and we found more remains.
15 And in 1993, the Ute Mountain Tribe said, yes, we
16 will support the THPO program so we can go through
17 this process, so our people can continue their
18 journey the way the Creator wanted us to do it,
19 wanted it His way too. So you know, I'm here today
20 just to let you know that the Ute Mountain Ute
21 Tribe strongly supports THPO, strongly supports
22 this program, and I just want to say thank you and
23 have a good day.

24 PATHIMI GOODTRACKS: Good morning, Review
25 Committee members. My name is Pathimi Goodtracks.

1 I'm a Southern Ute Tribal Council Member, and I'm
2 here today to express the firm support of the
3 Southern Ute Tribe and its commitment to the strong
4 working relationships with our many partners,
5 relationships that we have developed with agencies,
6 other tribes, regarding NAGPRA. And it hasn't come
7 without challenges or barriers. This has developed
8 over many years. Looking at Native American
9 tribes, there is no such thing as reburial, so
10 we've had to adapt and make unique exceptions, you
11 know, to provide for reburial, and it is
12 distressing to Native American people. But we have
13 been very successful at that through our
14 partnerships. The two Colorado Ute Tribes in the
15 state of Colorado are known as national leaders in
16 this regard, and we want to continue that.

17 Today, we are here to express to you a
18 significant barrier and ask you to be a strong
19 supporter in partnership with us to make small
20 changes in procedure, policy and interpretation, so
21 we may utilize state and Federal lands more broadly
22 to provide for reinterment. We have hundreds of
23 relatives waiting, waiting for reburial, and it is
24 distressing to Native people when our ancestors and
25 relatives are left in limbo. We want to reconnect

1 them from a cultural and spiritual approach, and we
2 request your help in helping us be successful and
3 provide for the intent and spirit of NAGPRA. Thank
4 you.

5 ERNEST HOUSE, JR.: (Native American language.)
6 Good morning, Madam Chair and committee members.
7 Thank you for the opportunity to be here. It is an
8 honor. My name is Ernest House, Jr. I'm the
9 Executive Secretary for the Colorado Commission of
10 Indian Affairs and a member of the Ute Mountain Ute
11 Tribe, Towaoc, Colorado. I'm also representing
12 Colorado Lieutenant Governor Joseph Garcia, as he
13 sends his regrets he is not able to be with you
14 today.

15 The Colorado Commission of Indian Affairs,
16 CCIA, was enacted by Colorado legislation in 1976
17 as the official state liaison between our two state
18 resident tribes, the Southern Ute and Ute Mountain
19 Ute Tribe, and the State of Colorado. Through the
20 Colorado Commission of Indian Affairs, we've worked
21 closely with our two resident tribes in many areas
22 of state government, and we continue to maintain a
23 government-to-government relationship.

24 The Colorado Lands Reinterment and
25 Repatriation Workgroup was formed in 2011 at the

1 request of both Ute Tribes to identify potential
2 lands within Colorado for reburial of Native
3 American human remains in museum, university, state
4 and Federal agency collections. We are here today
5 to seek your guidance and support in moving this
6 issue forward.

7 Myself and others first approached this
8 committee in 2006 in Denver, Colorado, to receive
9 your support for our then tribally driven process
10 for consultation, transfer and reburial of
11 culturally unidentifiable Native American human
12 remains and associated funerary objects originating
13 from inadvertent discoveries on Colorado state and
14 private lands. This committee gave us great
15 insight and direction in moving forward which is
16 why our state protocol is precedent setting and
17 continues to be a model for state tribal
18 collaboration and partnership.

19 Just as we did then, we are here today with
20 both Ute tribes to show our continued support for a
21 tribally driven approach to an ongoing problem. As
22 you know, many states – as you know, some states
23 and most Federal agencies have the management
24 policy discretion to reinter remains that
25 originated from lands they manage, but when site

1 origin information is lacking there are no
2 straightforward reburial location options. Most
3 Federal and state agencies require a policy waiver
4 to reinter remains, or have no policy in place.

5 In our experience many repatriating tribes
6 prefer state and Federal lands for reinterment to
7 better preserve and protect reburial sites and hold
8 the confidentiality of those locations in
9 perpetuity. Contemporary tribal reservation lands
10 do not necessarily reflect aboriginal occupation
11 and, as such, are not the preferred burial location
12 option for many repatriating tribes. In addition,
13 many tribal nations do not have the personnel
14 available to provide long-term monitoring for these
15 reburial sites. Therefore a limited number of
16 potential reinterment locations both on state and
17 Federal land are needed to reinter remains as close
18 as possible to their original removal location,
19 when known, or a current repository location.

20 Now you might think that Colorado's process
21 and protocol approved by this committee in 2006
22 would be sufficient to address this issue; however,
23 that process and protocol only addresses
24 inadvertent discoveries from state or private land
25 in Colorado, and reburial locations are few and

1 limited. Also many of these individuals are in
2 museum collections and are not under the control of
3 state and Federal land-managing agencies. These
4 institutions generally do not have access to land
5 suitable for reburials, though they have an assumed
6 shared responsibility to secure suitable and
7 appropriate locations for reburial.

8 As you know, there will be an ongoing need for
9 reburials of Native American individuals
10 repatriated under NAGPRA. At present, over 660
11 individuals originating from the state of Colorado
12 have been reported on the National Park Service
13 National NAGPRA CUI database. It is likely tribes
14 should request and desire that they be reinterred
15 in Colorado.

16 Along with our partners we come before you
17 today seeking your support and recommendation to
18 Congress and the Secretary of the Interior that all
19 Federal agencies with jurisdiction over lands
20 within the state of Colorado identify specific
21 locations where they will be willing and able to
22 exercise discretion and flexibility in their
23 respective management policies to allow for
24 reburials of Native American human remains
25 repatriated under NAGPRA. The Colorado Lands

1 Reinterment and Repatriation Workgroup is making
2 the same request to the state of Colorado to
3 identify similar lands and locations for reburials.
4 This new era requires a new kind of thinking and
5 collaboration to address these very difficult and
6 sensitive issues.

7 The Colorado Commission of Indian Affairs is
8 honored to be a partner in developing and standing
9 – a standing process and policy across state and
10 Federal lines for Federal – for future
11 repatriations and reburials, and we hope that you
12 will join us in that journey. On behalf of
13 Colorado Lieutenant Governor Joseph Garcia, the
14 Colorado Commission of Indian Affairs, the tribes,
15 the state of Colorado, I would like to thank you
16 each for your consideration of our request to
17 address a much needed and sensitive issue across
18 the United States and Indian country. We
19 appreciate your calm commitment and dedication to
20 this issue. (Native American language.) Thank you
21 again for allowing me some time.

22 TERRY KNIGHT: Good morning, members of the
23 committee, like I said, my name is Terry Knight.
24 And just to put it in simple terms, I'm the guy
25 that puts these remains down whenever and however,

1 and one of the ones that was questioning why we
2 couldn't do it this way and that way, and we
3 couldn't put them over here, and was given the
4 answer that, well, under Federal guidelines, state
5 guidelines, this and that, and all kinds of other
6 paperwork. I'm saying, you know, there's got to be
7 a way, you know. We have to do these things. It's
8 our duty. And I'm quite fortunate that I have
9 state people, staff people to help me work with
10 this. The tribal councils that have all the people
11 that have all the technical knowledge that can put
12 my concerns into writing and other things where
13 other people can understand it, because I don't
14 like to get into long processes, just do it, you
15 know. And I'm not quite as eloquent as some of our
16 political people and our technical people, nor am I
17 that articulate, and I don't want to be, you know.
18 That's not part of what we do.

19 But just to have these remains reburied, you
20 know, it seems like it's coming into the
21 administrative realm, the political realm of who
22 makes decisions on what and this and where. And me
23 within the spiritual realm, I say, you know, wow, I
24 say (Native American language), you know, all this
25 just to put these people down wherever they came

1 from, however they came to be, and – but it's quite
2 a process, and sometimes it amazes me at what kind
3 of obstacles that we have to go over just to do
4 this even for just one person, and I just said,
5 well, you know, we've got to do something with
6 this.

7 But here lately, some of the Federal agencies
8 in the state of the Colorado are starting to work
9 with us and see what we're doing and work within
10 their regulations as how they can accommodate this.
11 But one of the other big ones is Mesa Verde
12 National Park. I don't know if you've heard about
13 it, but there's quite a controversy there. And
14 we're saying – and some of the pueblos here are
15 saying, well, these people are ancient Puebloans,
16 why couldn't we put them over there? No, they
17 didn't come from here. We said, well, there was no
18 park back then. They were all together, so why
19 can't we do that? No, they didn't come from here.
20 So we don't like that, just straight out, we don't
21 like it. So we said, there's got to be a way
22 somehow.

23 It seems that there are some avenues that can
24 be taken, but not everybody's like that, and
25 there's some agencies that are willing, who bend

1 backwards to accommodate our requests. And I said,
2 well, who's the person who can do all this? Well,
3 the Honorable Secretary of State Mr. Salazar. I
4 said, well, let's talk to him. Can we talk to him?
5 How do we get to do this? Well, we've got to go to
6 the NAGPRA Review Committee. Well, let's go.
7 Let's get it done. Let's go up the ladder. And
8 somehow, somehow, have him or his people, whoever
9 it is, make that directive, make it come from the
10 top all the way down to within the Federal
11 administration, different agencies, that they work
12 with the tribes and get these things done. Instead
13 of an option, make it mandatory. I said, that's
14 what I would like, then we could do this. Then I
15 can finish what I'm doing here.

16 And so to me and others, it's important that
17 we do this. And I was thinking about it at 5
18 o'clock this morning, that we as individuals, human
19 beings, we don't think that much. We don't — what
20 we call (Native American language), we don't think
21 big, over and above our own realm here. But
22 sometimes we have to think over and above into a
23 different realm, the spiritual realm. And when I
24 was doing that, it was taking me all the way back,
25 maybe centuries ago, whenever these people were

1 alive, and they were people just like us. And I
2 said, well, why shouldn't we give them that same
3 consideration that we do today? Why can't some of
4 these people think in that manner? Why does it
5 always have to be within the physical realm here
6 today? Why can't we think over and beyond in the
7 past and get these things done? I think they would
8 feel a lot better if they could. And I said, I
9 just kind of wonder about my people nowadays.

10 And I've been working in this area since 1978,
11 when we first crashed one of the archeology
12 conventions there in Durango at Fort Lewis College
13 in 1978. That's how long I've been at this. And
14 so – and since that time and here recently,
15 scientific evidence on some of these sites have
16 said, you Ute people have been here within the
17 state of Colorado for at least 8,000 years. And I
18 said that's right. That's what my Elders told me.
19 We've been here forever. And I said, well, it
20 seems like we have that duty that we can do this.
21 These people were probably here. Their people were
22 here, living here when our Elders were around.
23 They understood each other. Probably, I said, they
24 might be our brothers and sisters.

25 So why can't we think in that manner and say,

1 we want to put these people, our relations, back in
2 the ground. Give them back to Mother Earth. Give
3 the Mother Earth's children back to her so she can
4 take care of them. Why do they have to be handled
5 in this manner? Why do they have to be studied and
6 this and that and whatever? And you know, and I
7 said, it just — people can't seem to accept from
8 1,000, 2,000, whatever — however many years ago
9 that the makeup of the human body, the bone
10 structure and all that, will change, the process of
11 evolution as we go along. Why can't somebody just
12 say, yes, that's right? Why do they have to go
13 back and look at it and say, I want to study it?
14 I'm curious as to what they were, who they were.
15 Why can't they just accept that, how the Creator
16 has set this process of evaluation and time? Why
17 can't they just accept it, and say (Native American
18 language)? I said, why do they have to keep going
19 back and doing this? And kind of — I won't say it,
20 but it bothers me, and I say, why? We want to put
21 them back down, give them back to Mother Earth.

22 And so I'm really grateful that our efforts
23 have come through up to this time with our Colorado
24 process, and I have the people here to help me, the
25 technical people and people we work with within the

1 state administration and even the Federal people,
2 that they're doing their best to help us. But
3 regulations seem to hinder that process, that's why
4 I said, well, who's the boss here? Who's that man?
5 Let's talk to him. How do we get to him? I think
6 we could make some kind of effort here with the
7 committee's support and tell this man that within
8 in the regulations that it not be an option, that
9 it would be mandatory to work with the tribes and
10 get these people reinterred back into Mother Earth.

11 Because like I said, after all the politics,
12 the speechmaking and everything is said and done,
13 I'm one of the main people that's down in that
14 gravesite putting them back. And so I said, you
15 guys do whatever you have to do, because in the
16 end, they're mine, and I'm going to put them back.
17 That's what I want to do, see this as a duty. And
18 that's when I said, because it makes you think. It
19 makes you think about who these people were. What
20 were they? They were human beings just like you
21 and me. And they need that. They need that, and
22 we need to complete that cycle in order to continue
23 on with what we're doing.

24 And so that's my – my pitch to you all, that
25 we want your support. And maybe we don't have all

1 our documentation that you can take, but we are
2 going to work on it, come up with it. The two Ute
3 Tribes, I'm sure, will, you know, pass resolutions
4 to that effect here very soon. Colorado Commission
5 of Indian Affairs is meeting in Towaoc the first
6 week of June, and I'm sure we'll get adequate
7 documentation there to give you so you can take to
8 Mr. Salazar, or whoever you have to take it to, to
9 show that the political process is – we understand
10 that we have to do that, and the administrative
11 people are going to do that. And I'm going to be
12 there, and I'm going to be waiting to say, you
13 know, are you done yet? Can we do this? When are
14 we going to do this?

15 So that's my concern and my thoughts, and I
16 hope that you understand that. I don't know who
17 you are. I don't know where you come from, and
18 some of you guys look kind of young. In my – in my
19 culture, it's supposed to be a man that makes these
20 decisions and understands these things. And if
21 it's a woman, has to be a woman that understands
22 life and all these different things of how things
23 are done. In that respective manner – and I'm
24 thinking, I hope these people know what I'm talking
25 about when I'm talking about the spirituality of

1 our cultures and our religion and what has to be
2 done and all, because that's what I mean, because
3 I'm probably older than all of you. So I just want
4 to say that I hope you understand what I'm saying,
5 and I hope that you can, you know, put our concerns
6 in to the appropriate language that you have to and
7 pass it on. And I hope that the Great Spirit will
8 assist you in that in putting these down into
9 writing so that whoever looks at it can – knows
10 what you're talking about, understands what you're
11 talking about, and can assist us in this in a good,
12 positive way.

13 So I just want to tell you that I'm glad to be
14 here seeking your assistance, and I wish the rest
15 of your work here, not only here but whatever you
16 do, you know, will be good. And whatever few words
17 I've said, well, other people have said it, I'm
18 sure, that will be there. So what when they listen
19 to them or look at what they're doing, somehow,
20 some way, their needs can be met too, because it's
21 different coming from different cultures, different
22 tribes' cultures, and we're coming to mainstream
23 America, and we have to deal with the Federal
24 people, the state people, the local people, and
25 this and that and whatever, just to get a few

1 things done that is supposed to be done, that we
2 understand has to be done.

3 So I'll just leave you with that, and some
4 time and point I could probably say some more, but
5 I just want to thank all of you. (Native American
6 language.)

7 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

8 ROSITA WORL: I want to thank the Ute Mountain
9 Tribe for reporting, first of all, on the positive
10 relationships that you have developed with
11 different Federal agencies. That's very heartening
12 to hear that kind of success. And also, as I
13 understand, you are requesting the assistance of
14 the Review Committee in looking at policies and
15 procedures and asking for our help so that you
16 would be able to rebury ancestors on state and
17 Federal lands. And I might report to you first
18 that the Review Committee has heard this concern
19 all across the country. It's a concern of Native
20 Americans all across the country, to rebury their
21 ancestors. And the Review Committee has made
22 recommendations to Congress in its annual report to
23 Congress, recommending that we establish – that the
24 Federal Government establish policies for the
25 reburial of ancestral human remains on – at the

1 area at which they were taken. And we have had
2 some successes in finding out that some agencies
3 have indeed changed their policies to allow for the
4 reburial, some at the original site where they were
5 taken, and others where maybe they want to have a
6 protected site. But it does appear, you know, that
7 this is an ongoing issue and that might meet – need
8 further work of the Review Committee.

9 So at this point in time, I'd like to open it
10 up for questions and comments from the Review
11 Committee, and if we have any questions from the
12 Utes, maybe we could ask that at this time. Any
13 questions?

14 Go ahead, Eric.

15 ERIC HEMENWAY: Well, first I'd like to say
16 thank you, *Miigwetch*, for coming here. I do
17 repatriation for my tribe in Northern Michigan, the
18 Little Bay Band of Odawa Indians, and we run into
19 the same concerns and problems that you all run
20 into. And it seems that repatriation has two folds
21 for tribes. It's the legal process of getting
22 remains back: you write the claims; you consult;
23 you go through the notice procedures. But for
24 tribes, once the notice is up and you do the
25 physical return, there's a whole 'nother realm of

1 repatriation that occurs, and that is where do you
2 rebury, when do you rebury, and how do you rebury?
3 And this is a concern that's uniquely to the tribe.
4 This has nothing to do with the museums. Sometimes
5 the Federal agencies, when they're opening up lands
6 to let reinterment happen. But for tribes, it's a
7 unique situation, as they said, that reburials
8 didn't occur before, and that was with our tribe.
9 We had a lot of ceremonies pertaining to the dead,
10 but we've never had an actual reburial ceremony.

11 So this is a new phenomenon for us that we're
12 trying to deal with in the best way possible and
13 the most respectful way possible. And the issue
14 that we always run into is where do we rebury? And
15 personally I've reburied over 200 of my ancestors,
16 and it's always been where. And security is always
17 an issue. Sometimes we can rebury pretty close to
18 where we get the – the remains originally come from
19 on tribal lands. But a lot of times we can't do
20 that, and we resort to going to the state and going
21 to the Natural – the Department of Natural
22 Resources in the State of Michigan and saying, can
23 you open up one of their state parks for a
24 reburial? And we've had the good fortune of having
25 good relationships with the state parks and they

1 say, yes, we can open up an area that will be
2 monitored and well watched, and they let us do our
3 reburial ceremony accordingly to our procedures.
4 But that's dependent on good will of the state, and
5 it's all depending on relationships with that state
6 and that department. And it's not mandated.

7 So when we run into a situation where a park
8 is a little less willing to rebury, we come into
9 the same situation you all do, is we have to wait
10 and see where we can go, if another tribe opens up
11 their lands, then we can go to that option. We
12 don't have a lot of Federal lands in Michigan, so
13 that's not as big of issue for us. But I can see
14 it's a bigger issue for the tribes out West. And
15 so I can see this, and we would, you know, open up
16 our report to Congress, show these – that this is a
17 need for tribes, because once the tribes receive
18 the remains, we feel that the spiritual prosperity,
19 the identity, the continuity of our culture all is
20 dependent on honoring our ancestors. And so we try
21 to do that in the most respectful way, but
22 sometimes there are these legal barriers that get
23 in that way. So we hear your concerns. We share
24 them, and so we thank you for making your comments.

25 ROSITA WORL: Thank you, Eric.

1 Any further questions or comments?

2 Alex?

3 TERRY KNIGHT: Let me make a comment to that
4 before you go on.

5 ROSITA WORL: All right. Go ahead.

6 TERRY KNIGHT: Basically, what we're talking
7 about is those unidentified human remains, and
8 those that have come from known tribal areas we can
9 get a cultural identification, cultural
10 association, affiliation, those are okay, and those
11 people that we know whose ancestors they are we've
12 got, I'll say, no problem with that. The big
13 problem is those that are in museums and those that
14 come out of somebody's house that have been passed
15 down, and they don't know who they are or where
16 they came from and those are piling up. And so
17 we're saying, you know, we need to put these people
18 down someplace. And the agencies that we've been
19 working with said, well, we'd like to accommodate
20 you but who are they, where did they come from?
21 You know, and so therefore we can't - I can't let
22 you bury them over here on my property or on my -
23 within my jurisdiction because I don't know who
24 they are and you don't know who they are.

25 So that's one of the main things where that's

1 one of the biggest problems that we have, so if
2 somehow we could bridge this and get somebody
3 somehow get some way some authority to put these
4 down, maybe with National Forest Service land, Park
5 lands, BOR, somebody. That's, you know, one of our
6 biggest problems, so go ahead.

7 ROSITA WORL: Thank you. Thank you.

8 Alex.

9 ALEXANDER BARKER: First, thank you for your
10 presentation, and I'd like to express how much we
11 welcome this kind of collaboration between tribes,
12 Federal agencies, state agencies, museums, all the
13 different partners that you identified in the
14 documents you presented to us. I do have a
15 question just to make sure I understand what you're
16 specifically requesting. As I understand it, this
17 is an instance in which remains that have been
18 determined to be culturally unidentifiable can't be
19 placed on Federal land by virtue of the fact that
20 you're not able to identify exactly who they are.
21 Is this an instance in which your local partners in
22 the Forest Service, BLM, Park Service would like to
23 be able to bury them but they can't get a waiver or
24 a waiver isn't possible from a higher level, or is
25 this something where there's resistance with the

1 partners in your own workgroup?

2 ERNEST HOUSE, JR.: Thank you for the question,
3 and excuse me, I was seeking some clarification as
4 well, and we're also including those that can be
5 affiliated also, not just culturally
6 unidentifiable. And the question around – we have
7 a great working relationship with those Federal
8 agencies, and I would also want to put out there
9 that not just within the Department of Interior but
10 the Department of Agriculture, U.S. Fish and
11 Wildlife Service would also – we'd invite them to
12 the table as well, for those continued
13 collaboration efforts. And so it would be seeking
14 lands there as well. And I apologize, I didn't
15 hear – for seeking clarification, I didn't hear the
16 second part – the end of your question.

17 ALEXANDER BARKER: I'm curious whether this –
18 the partners you're already working with are
19 comfortable and would like to be able to
20 accommodate the reburial but they're unable to get
21 the waiver. As I understand it, the current
22 regulations allow it if the policies are waived.
23 Are you local partners comfortable with the
24 reburial, or is it something that – perhaps I
25 should rephrase the question. The documents you

1 provided us suggest that these agencies should be
2 allowed to exercise discretion and flexibility to
3 allow these burials, but in the presentation what I
4 heard was the suggestion that this be mandated and
5 made mandatory.

6 ERNEST HOUSE, JR.: Sorry, and thank you for
7 that clarification. Yes, we've - in talking with
8 some of the Federal agencies, we've seen some of
9 their policies and they're flexible within those
10 areas, but they're not across the board. And so,
11 you know, working with National Park Service would
12 have something different than the National Forest
13 Service. And so we're looking at something that
14 would be systematic across Federal agencies to work
15 with our state agencies and tribes, universities
16 and other museums, other folks like that to have a
17 blanket policy, so to speak.

18 TERRY KNIGHT: Also too, that within that
19 whatever policy we have to take in account that
20 many of these agencies say one of the reasons they
21 don't want to do that is that because they have to
22 open up their records, whatever, and if whoever
23 wants to come around and look at some areas,
24 whatever, these areas will not be protected and
25 that there might be continued vandalism if these

1 known burial areas, you know, are open to the
2 public. And they don't want to do that. They
3 don't want to take the liability of doing that. So
4 that - and the tribes can't assert their
5 jurisdiction on these lands and say, we will
6 protect them. That's one of the things that
7 they've talked about. Well, yes, we could, but we
8 don't want to come under a lawsuit, because you've
9 done this or someone else has come and desecrated
10 these burial grounds again so - and then they say,
11 well, the regulations say this, this and this. And
12 so somehow, whatever - whatever kind of regulations
13 are implemented or devised and implemented has to
14 cover those agencies so that they can't say, well,
15 that's a liability. And I just - I just don't want
16 to do it.

17 ALEXANDER BARKER: Thank you.

18 ROSITA WORL: Mervin.

19 MERVIN WRIGHT, JR.: I too want to express my
20 thanks for those of you here before us presenting
21 this issue. (Portion of comment inaudible) is made
22 up of 87 percent Federal land, so we're in a
23 different situation. But you brought up an issue
24 here that, you know, if it's true, it supports the
25 theoretical argument and hypothetical argument that

1 we're facing. Unfortunately in Nevada, the
2 agencies' theory state that the Paiute – our people
3 have only been in the Great Basin for 500 years.
4 I've said, by no uncertain terms, how ridiculous
5 that is. But that's what we're up against, you
6 know, theory versus our origins. And I know that
7 science will always oppose the truth. And I think
8 that when we look at what has happened in Nevada
9 and the number of collections that are in museums
10 and under agency control, the failure of their
11 trust responsibility years ago when these
12 collections were unearthed, you know, still remain
13 today. And so when we're looking at this situation
14 of that trust responsibility, be it whichever
15 Federal agency is responsible and has control of
16 those collections, that same trust responsibility
17 has to be acknowledged through this process to
18 apply that responsibility to us as tribes, to you
19 as tribes. It's not our fault that some of these
20 collections are out of our possession.

21 It is our responsibility, however, you know,
22 to care for them, and I've always advocated from
23 the first time, from the first Review Committee
24 meeting I attended that in many traditions, if not
25 all of our traditions, there is no such thing as

1 culturally unidentifiable; that our people, our
2 origins go back to the beginning of time. Our
3 language is proof, you know, from the time that we
4 were taught to communicate. And you're right that
5 the liability is going to be the controlling factor
6 here. But however, I do believe that having a
7 inclusive policy developed by the Interior
8 Department, by the committee here with our input,
9 with your input, with the effort to establish a
10 policy that we're - we will be able to establish
11 whatever liability levels that will be, be it
12 controlled or limited. But I do believe trust
13 responsibility is going to be part of that
14 foundation.

15 And then the last thing you mentioned, because
16 certain collections might be culturally
17 unidentifiable that the agencies are like hands
18 off, you know. They really don't want to take that
19 responsibility, but I will again contend that as us
20 today be it who are responsible to care for these
21 that we will accept the responsibility to reinter
22 these collections, because as we've always taken
23 the position for us to have to do this, you know,
24 we shouldn't be doing it in the first place. And
25 in some cases where our tribes may have been

1 responsible for authorizing excavations, we today
2 are now taking that responsibility, but at the same
3 time to acknowledge the deep respect that's
4 required for us as people, as human beings, this is
5 where I believe there's a serious disconnect with
6 not only the Federal officials and the Federal
7 authority, but state authorities, Western
8 civilization, institutional civilization, right
9 down the line. And for us to be able to advocate
10 and hear that the mutual respect needs to
11 establish, that's our charge. That's every -
12 that's all of us, including those on the other side
13 that are refusing to process repatriation, and
14 that's how I look at the disconnect of what we're
15 trying to accomplish and the frustrations and
16 anguish that we have to experience when they tell
17 us no.

18 The burden is 100 percent on us tribes that we
19 have to continue to prove and prove again and prove
20 again, but the denying authority doesn't have to
21 prove one thing about why they're saying no to us.
22 And I'm hopeful that when we start talking about
23 the balance and the level playing field that we're
24 going to be honest about it. It's not. It's not
25 balanced. As long as that burden of proof is 100

1 percent entirely on the tribes, it's not balanced,
2 and so if we can get that to this level playing
3 field like it's always been advocated, and I was
4 saying it early on, early '90s when I was working
5 on this repatriation law and implementing it and
6 doing things, that I was excited that, yes,
7 everyone's on the level playing field, but over
8 time, it's not – it's not true.

9 And so once we can get that burden shifted,
10 and I think when we start working on a policy like
11 this, maybe this would be a mechanism that would
12 help the United States Government understand when
13 we talk about level playing field and balanced law,
14 balanced implementation that this would be a method
15 to be able to do that. Thank you.

16 ROSITA WORL: Do we have any further questions
17 of the tribe? Any further questions?

18 If not, thank you very much for enlightening
19 us further about this issue, and also thank you for
20 reporting on your experiences, the good things that
21 you've developed with Federal agencies, the good
22 things that are happening with the Colorado
23 Commission. We really applaud those efforts.
24 Thank you, and we will try to address this issue.
25 Thank you very much.

1 ERNEST HOUSE, JR.: Thank you.

2 TERRY KNIGHT: Thank you very much.

3 ROSITA WORL: Okay. We have heard this issue
4 discussed on multiple times from various tribes.
5 The Committee has made the recommendation in its
6 report to Congress, and maybe our recommendation
7 was a simple recommendation calling for Federal
8 agencies – and I think we concentrated on Federal
9 agencies, calling for the establishment of policies
10 to allow for the reburial. But from this
11 discussion we've heard that it's a much more
12 complex issue. We've heard about state lands.
13 We've heard that the reburial of CUI, culturally
14 unidentifiable Native Americans, is an issue.
15 We've heard that we should have uniform policies
16 and procedures across the country. There is the
17 issue of protection of ancestors after they have
18 been reburied, and then also the issue of trust
19 responsibilities. And so it's much more complex,
20 and I'm now going to ask the committee, how would
21 the committee like to address this issue?

22 Sonya.

23 **REVIEW COMMITTEE MOTION**

24 SONYA ATALAY: Well, I would move that the
25 Review Committee establish a subcommittee to

1 consider drafting a required policy to allow
2 reburial on Federal lands and state lands.

3 ROSITA WORL: We have a motion to establish a
4 subcommittee of the Review Committee that would
5 address the reburial of ancestral human remains on
6 both Federal and state lands.

7 LINDALEE FARM: I would second.

8 ROSITA WORL: And that motion has been
9 seconded. Any further discussion on this motion?

10 Are we ready for the question?

11 Hearing no further comments, all those in
12 favor of the motion signify by saying aye.

13 SONYA ATALAY: Aye.

14 ALEXANDER BARKER: Aye.

15 LINDALEE FARM: Aye.

16 ERIC HEMENWAY: Aye.

17 ADRIAN JOHN: Aye.

18 ROSITA WORL: Aye.

19 MERVIN WRIGHT, JR.: Aye.

20 ROSITA WORL: Those opposed say no.

21 That motion to establish a subcommittee on
22 this issue has been adopted. Thank you very much.

23 So at this time, we are supposed to go on
24 break. Madam DFO, is that — should we go ahead and
25 do that or —

1 SHERRY HUTT: You're right on time. It would
2 seem appropriate.

3 ROSITA WORL: All right. Thanks.

4 If there are no objections from the committee,
5 we will recess for a break until 10:30.

6 SHERRY HUTT: From 10:30 until 11 o'clock,
7 right? We'll reconvene at 11:00.

8 ROSITA WORL: Okay. We will reconvene at
9 11:00. Thank you.

10 **BREAK**

11 **DISCUSSION: REBURIAL SUBCOMMITTEE**

12 ROSITA WORL: We will go ahead and call the
13 Review Committee meeting back into order. And we
14 left on our recess, we established a subcommittee,
15 and a subcommittee to examine the reburial issues
16 and offer recommendations. We know that we have
17 very specific recommendations that were requested
18 by the Ute Mountain Tribe, and then we had some
19 very general issues that the Committee will be
20 addressing.

21 The Review Committee establishes subcommittees
22 to work on specific issues. When the Committee is
23 meeting as a whole, it is always in the public, but
24 we are allowed by FACA rules to establish
25 subcommittees to address very specific issues, and

1 in this case, we have established a subcommittee.
2 The Review Committee members voted to establish
3 this subcommittee, and I would like to appoint to
4 that committee Eric, Eric who would serve as the
5 Chair, assisted by Alex and also Mervin, also on
6 that committee. And the committee, of course, is –
7 when they have their meetings, other committee
8 members may attend or listen in, if they so desire.
9 Usually it's conducted via audio conference call,
10 or else a lot of times we do our work over email.

11 Did anyone else want to add any comments about
12 that subcommittee? Okay.

13 ADRIAN JOHN: I've got a comment.

14 ROSITA WORL: Go ahead.

15 ADRIAN JOHN: I just had a comment about just
16 the situation in general. It's something, coming
17 from New York and coming from the Haudenosaunee
18 that we don't really – I don't have very much
19 opportunity – we don't have any opportunities like
20 that. We've never – it's not something that we
21 encounter when repatriating remains. And being
22 young, the Haudenosaunee Standing Committee has
23 been a part of repatriating remains and items a lot
24 longer than I've been born, so this is something
25 that's kind of, I would say, an old man's position

1 and job to do, as Mr. Knight has said. But now
2 there's hardly any older men to do that sort of -
3 that sort of work. It's come to younger people
4 like myself to have to do that, so I guess in a
5 sense of spirituality and our ways, I'm kind of the
6 old man now that has to do that sort of work.

7 And having participated in reburying hundreds
8 of remains in the last five or six years, like I
9 said, it's something that we're not really familiar
10 with because we hardly have any Federal lands near
11 us. So we've had to reinter remains of our people
12 and other peoples' ancestors into our lands, and we
13 designated areas of our own land for that, in
14 cemeteries, because we know that in our own land
15 they're going to be protected and that we'll be
16 able to watch out after them. And my main comment
17 with that is that we understand that whatever way
18 it's done that it's done with the most respectful
19 way and the most proper way. And I think looking
20 at the Colorado situation that they're looking for
21 that and maintain that they do it in the most
22 proper way that they see it for their people and
23 for their ancestors.

24 Recently, we had to reinter a group of 44
25 remains from West Virginia, which they weren't our

1 people. They were Eastern Shawnee, but they asked
2 us to help out. At first it was five, by the time
3 we were done it was 44. And it was state land, so
4 there was no Federal NAGPRA or anything that had to
5 come into play. To me it's - that goes beyond a
6 discovery. That's a cemetery, you know, when you
7 start digging up 44 remains and you keep going, and
8 that's not proper in my mind, you know.

9 And so like in this situation, whatever way
10 this committee, this subcommittee can help to make
11 sure that the Western tribes or those that want to
12 rebury on Federal lands or state lands, that they
13 find that to be the most proper way that we - that
14 we're able to help them do that, and hopefully
15 maintain it where there's a good relationship
16 between the Federal Bureau of Land Management and
17 the state parks to be able to do that, and they do
18 it in a respectful way where we're respecting their
19 ancestors, because they - you know, they do need to
20 be reburied. They need to be put back on their
21 journey. So just saying that I just wanted to make
22 that comment, you know, that we fall in line and
23 make sure that we recognize that each tribe is
24 different and each situation is different, and that
25 we're just going to help them do it the way that

1 they feel is the most respectful and most proper
2 way. Thank you.

3 ROSITA WORL: Adrian, thank you for sharing
4 your comments with us. I think it does
5 demonstrate, you know, that the Review Committee
6 members who sit here are individuals who have had
7 experience, who have experience with NAGPRA, and
8 who are committed, you know, to the implementation,
9 the full implementation of NAGPRA. So thank you.

10 And also for the record, I just might note
11 also that although I am a woman, my ceremonial name
12 is *Kaa haní*, and it means "Woman Who Stands in the
13 Place of a Man."

14 So with that, any other comments on the
15 subcommittee though, on that last issue? Okay.
16 I'm sure we're going to be hearing more about this.

17 So if we could now move into our next agenda
18 item. And we should have a presentation by the
19 National Park Service, Intermountain Region Office
20 of Indian Affairs and American Culture, and I think
21 we'll have Christine Landrum with us, from the –
22 who is the NAGPRA Coordinator. And first of all,
23 may we thank – on behalf of the Review Committee,
24 thank you for the great reception that we had last
25 evening. Thank you.

1 CHRISTINE LANDRUM: You're welcome. It was our
2 pleasure.

3 ROSITA WORL: So thank you. Go ahead and
4 introduce yourself and title for the record.

5 **PRESENTATION: NPS INTERMOUNTAIN REGION, OFFICE OF**
6 **INDIAN AFFAIRS & AMERICAN CULTURE**

7 **PRESENTATION**

8 CHRISTINE LANDRUM: Good morning. My name is
9 Christine Landrum. Can you hear me okay? Okay.
10 And thank you, Madam Chairwoman and members of the
11 Review Committee for this opportunity to provide
12 you with an overview of NAGPRA implementation in
13 the Intermountain Region of the National Park
14 Service. Again, my name is Christine Landrum, and
15 I'm very pleased to be here today as Director for
16 the Office of Indian Affairs and American Culture
17 of the Intermountain Region for the National Park
18 Service. Our office includes the NAGPRA Tribal
19 Liaison and Ethnography or Cultural Anthropology
20 Programs for the Intermountain Region. IMR
21 includes over 90 Park Service units within the
22 eight-state region of Arizona, Colorado, Montana,
23 New Mexico, Oklahoma, Texas, Utah, and Wyoming.

24 The National Park Service is unique as a
25 Federal agency in that it both complies with and

1 administers NAGPRA. The National NAGPRA Program,
2 as you are aware, is charged with administering
3 NAGPRA compliance for all museums and Federal
4 agencies, while the Park NAGPRA Program oversees
5 National Park Service compliance with NAGPRA
6 through technical guidance, training, and funding.
7 In addition, each of the seven NPS regions has at
8 least one person designated to serve as a regional
9 NAGPRA coordinator, providing compliance assistance
10 to Park Service units within their respective
11 regions.

12 For the Intermountain Region, the NAGPRA
13 Program is housed within the Office of Indian
14 Affairs and American Culture. We help parks with
15 every step of the NAGPRA process, from securing
16 internal NPS funding, to training, tribal
17 consultation, evidence evaluation, notice
18 publication, developing plans of actions and
19 comprehensive agreements, project management,
20 repatriations and reinterments. The IMR NAGPRA
21 Program works closely with the Intermountain Region
22 Museum Services and Archeology Programs to provide
23 comprehensive technical assistance. The IMR Office
24 of Indian Affairs and American Culture reports to
25 the Intermountain Regional Director, a reflection

1 of the importance the region places on government-
2 to-government relationships we share with American
3 Indian tribes.

4 There is still a great work – a great deal of
5 work to do in NAGPRA, and we look forward to
6 continuing to collaborate with our tribal
7 colleagues to achieve our common goals under
8 NAGPRA. That is to repatriate Native American
9 human remains and cultural items as efficiently,
10 transparently, respectfully and thoughtfully as
11 possible, in full compliance with the law. I would
12 like to highlight some of the great work that IMR
13 parks and tribes have accomplished together and
14 also identify some of the challenges we are working
15 closely together to address.

16 Since 1990, Intermountain Region NPS units
17 have published 49 Notices of Inventory Completion
18 covering 3,392 individuals and 8,547 associated
19 funerary objects. Of those, only 84 individuals
20 and 1,591 funerary objects are awaiting
21 repatriation by the tribes. IMR NPS units and the
22 Office of Indian Affairs and American Culture are
23 continuing to work proactively with the affiliated
24 tribes toward repatriation, in consideration of
25 ceremonial schedules and other cultural

1 considerations, as well as political and competing
2 claims issues. The majority of the repatriated
3 individuals and associated funerary objects
4 included in those previously published notices were
5 reburied in National Park Service units following
6 repatriation consistent with National Park Service
7 policies and to honor the requests of the tribes.

8 IMR NPS units have published 26 Notices of
9 Intent to Repatriate summary items covering: 371
10 unassociated funerary objects, all of which have
11 been repatriated; 2,521 sacred objects, all but 10
12 of which have been repatriated; and 22 objects of
13 cultural patrimony, all of which have been
14 repatriated. I want to personally thank Mary
15 Carroll, Acting Program Manager of the Park NAGPRA
16 Program, for providing these statistics. Mary does
17 an excellent job of tracking Park Service
18 compliance.

19 Here are some other interesting NAGPRA figures
20 for the Intermountain Region: 46 of the 104
21 National Park Service units with NAGPRA inventory
22 items are in the Intermountain Region, that's 44
23 percent of the entire National Park Service; 55 of
24 Intermountain Region's National Park Service units
25 have NAGPRA inventory and/or summary items, that's

1 60 percent of our Park Service units; 400 of the
2 1,499 culturally unidentifiable Native American
3 human remains in National Park Service custody are
4 in the Intermountain Region, that's just under a
5 third.

6 Several parks are working on Notices of
7 Inventory Completion for an estimated 457
8 affiliateable remains, including those parks that
9 were specifically identified in the National Park
10 Service's GAO audit response timeline. These
11 National Park Service units in the Intermountain
12 Region are working closely with the tribes toward
13 those targeted publication dates, and several draft
14 notices, I'm pleased to report, are currently under
15 review by the Park NAGPRA Program.

16 In response to requests from consulting tribes
17 in the Intermountain Region to proactively and
18 systematically address culturally unidentifiable
19 Native American human remains, the Intermountain
20 Region Office of Indian Affairs and American
21 Culture secured internal NPS funding for all of
22 those National Park Service Intermountain Region
23 units. Planning for this two-year project began
24 immediately after the new CUI regulations went into
25 effect and the project was initiated in Fiscal Year

1 '12 through a series of tribal consultations,
2 collection visits, and park visits. It is
3 scheduled for completion in 2013 with notice
4 publications, repatriations, and reburials in those
5 Park Service units as requested by the tribes. The
6 approach to this project is consistent with
7 Intermountain Region's efforts to be proactive in
8 addressing CUI even prior to the finalization of
9 the CUI regulations. With the completion of this
10 project all of the culturally unidentifiable human
11 remains in the custody of the Intermountain Region
12 will be repatriated.

13 While NPS units have worked closely with the
14 tribes to achieve the NAGPRA successes I just
15 mentioned, there are several outstanding challenges
16 and opportunities that Intermountain Region and
17 tribes are working closely together to address.
18 The first is identifying need. Intermountain
19 Region National Park Service units requested
20 approximately 3 million dollars in Park Service
21 NAGPRA project funds over the next five years.
22 Although the exact dollar amount of funded
23 projects, of course, has not yet been determined,
24 that is a strong statement, I believe, for the need
25 identified within the context of the National Park

1 Service.

2 For summary compliance, Intermountain Region
3 is committed to being proactive about consulting
4 further with tribes about potential summary items
5 identified through those 1993 summaries. We have
6 several projects underway in the National Park
7 Service that I believe are – have been very
8 progressive in collaboration with the tribes
9 including Aztec Ruins, Casa Grande, Gila Cliff
10 Dwellings and Little Big Horn Battlefield. Those
11 consultations have resulted in Notices of Intent to
12 Repatriate and repatriations have taken place.

13 Comprehensive agreements. Intermountain
14 Region is committed to honoring the requests from
15 tribes to replicate the multi-agency, multi-tribe
16 comprehensive agreement to address inadvertent
17 discoveries in the San Luis Valley of Colorado. We
18 are committed to honoring the request from the
19 tribes to repeat that elsewhere in the region, and
20 we're working to identify strategic geographic
21 partnerships with other Federal and state agencies
22 and tribes to accomplish that goal.

23 Contaminated Collections. The Office of
24 Indian Affairs and American Culture partnered with
25 the Regional Museum Services Program and a tribal

1 working group to develop a detailed protocol for
2 the testing of cultural items subject to NAGPRA for
3 heavy metal pesticides. Intermountain Region
4 NAGPRA Museum Services and Park NAGPRA Program
5 pooled their financial resources to purchase an
6 x-ray fluorescent analyzer that could be used for
7 testing cultural items in Park Service collections
8 as requested by the tribes. And that could be also
9 made available to tribes and other institutions for
10 testing cultural items as requested by the tribes.
11 As a result of the protocol development process and
12 tribal input, the NPS requires individual NPS units
13 to discuss the complex and sensitive issue of
14 contaminated collections at the very beginning of
15 each NAGPRA consultation process.

16 Lands for Reburial. As highlighted by the
17 previous Colorado Lands Repatriation and
18 Reinterment Workgroup presentation, this issue has
19 been identified as one of the most significant
20 challenges to full NAGPRA implementation in the
21 Intermountain Region. Like many other agencies
22 including the BLM and Forest Service, NPS units
23 have the affirmative discretion to reinter remains
24 that came from sites within their boundaries. The
25 Mesa Verde decision, that was mentioned earlier,

1 was made by the Superintendent in close
2 collaboration with the Intermountain Regional
3 Director and recently retired Director of Indian
4 Affairs and American Culture for the Intermountain
5 Region, Cyd Martin, who also served as the service-
6 wide NAGPRA – Park NAGPRA Program Manager. And so
7 that decision was taken to the Washington level of
8 the National Park Service at the time it was made.

9 Per the Park NAGPRA Program update provided at
10 the Reno, Nevada Review Committee meeting on this
11 same topic from the National Park Service, further
12 resolution of this issue would likely require
13 amending agency policy. So it may need to be
14 addressed at the Departmental level. IMR is
15 committed to collaborating with all of our
16 partners, tribes, museums, state and other Federal
17 agencies, to openly discuss this highly sensitive
18 topic and to identify strategies to address this
19 complex issue within the parameters of agency
20 policy.

21 In closing, I would like to thank the many
22 tribal representatives and colleagues here today
23 who serve as leaders both in the Intermountain
24 Region and on a national level in the areas of
25 NAGPRA, government-to-government relations,

1 indigenous rights, cultural education, and resource
2 protection. The National Park Service is honored
3 to partner with so many tribal leaders on these
4 important issues, and we look forward to future
5 collaborative opportunities. Thank you so much,
6 and I would be happy to answer any questions you
7 might have.

8 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

9 ROSITA WORL: Thank you very much, Ms. Landrum.
10 Does the committee have any questions? Alex?

11 ALEXANDER BARKER: Would a copy of your
12 presentation be available for –

13 CHRISTINE LANDRUM: Absolutely.

14 ALEXANDER BARKER: Thank you.

15 ROSITA WORL: Merv?

16 MERVIN WRIGHT, JR.: Yes, thank you for your
17 presentation. How many tribes are serviced in the
18 Intermountain Region?

19 CHRISTINE LANDRUM: Well, we consult with the
20 tribes certainly that are currently headquartered,
21 who have reservation lands in the Intermountain
22 Region, but we consult far more broadly because –
23 whether due to migration or interest in particular
24 sites, many of the tribes headquartered in states
25 that are adjacent, as far away, I should say, as

1 California and the Dakotas on a regular basis. And
2 so we consult in any given year with several
3 hundred tribes. I would say probably in the
4 ballpark of 175, if I had to estimate.

5 MERVIN WRIGHT, JR.: So this Intermountain
6 Region is not necessary established as part of the
7 12 BIA regions across the country?

8 CHRISTINE LANDRUM: If I understand your
9 question correctly, the boundaries of the
10 Intermountain Region of the National Park Service
11 do not necessarily coincide with the organizational
12 boundaries for other agencies, including the BIA or
13 the Forest Service. We each have kind of distinct
14 different management boundaries. Was that your
15 question?

16 MERVIN WRIGHT, JR.: Yes.

17 CHRISTINE LANDRUM: Okay.

18 ROSITA WORL: Any further questions or
19 comments?

20 Well, thank you very much for the very
21 thorough report.

22 CHRISTINE LANDRUM: It was my pleasure.

23 ROSITA WORL: We look forward to having a copy.

24 CHRISTINE LANDRUM: Great.

25 ROSITA WORL: Thank you.

1 Okay. Our next agenda item is a presentation
2 from the USDA Forest Service, NAGPRA Office.

3 Sherry, did we have some additions here?

4 SHERRY HUTT: Yes, we have – if I might, Madam
5 Chairman, joining – if the gentlemen will come
6 forward, joining Frank Wozniak, the National NAGPRA
7 Coordinator for the USDA Forest Service, will be –
8 the first gentleman there is Dan Meza from the
9 Office of Tribal Relations, Region 3 of the Park
10 Service. Also joining him is Gilbert Zepeda, the
11 Deputy Regional Forester for Region 3. Also we
12 have Frank Johnson, the Office of Tribal Relations
13 for the Coconino National Forest. And joining in
14 at this time or momentarily will be Leigh
15 Kuwanwisiwma from Hopi.

16 ROSITA WORL: Go ahead, you may proceed, and if
17 you would introduce yourselves and your title, as
18 you speak. Thank you.

19 **PRESENTATION: USDA FOREST SERVICE, NAGPRA OFFICE**

20 **PRESENTATION**

21 GILBERT ZEPEDA: Yes, Madam Chair, committee
22 members, my name is Gilbert Zepeda. Good morning.
23 I'm the Deputy Regional Forester for the
24 Southwestern Region of the U.S. Forest Service.
25 I'm pleased to be here with my colleagues and to

1 provide our agency's national report on our
2 progress with NAGPRA compliance, as well as the
3 recent GAO report and reburial on National Forest
4 System lands.

5 To give you a little background on the U.S.
6 Forest Service, we're charged with the stewardship
7 on 193 million acres across the country of forest
8 and grasslands. Those lands are further divided
9 into regions geographically, nine of them across
10 the country, with our national headquarters in
11 Washington, DC. Here in the Southwestern Region,
12 we're charged with the stewardship of over 20
13 million acres on 11 National Forests and three
14 grasslands in the states of Arizona, New Mexico,
15 Texas and Oklahoma.

16 Each one of our National Forests has a forest
17 supervisor, and that individual is the line officer
18 in charge of that unit and is the primary official
19 responsible for all decisions on that National
20 Forest. As the Deputy Regional Forester, I'm part
21 of a three-person executive leadership team that
22 oversees all the activities and management on those
23 National Forests and grasslands within the
24 Southwestern Region.

25 Within the – within the agency, the

1 Southwestern Region has the largest number of human
2 remains and funerary objects to repatriate to
3 tribes under NAGPRA. For this reason, the
4 responsibility for NAGPRA compliance is reserved
5 for the Regional Forester in the Southwestern
6 Region. That is also why the National NAGPRA
7 Coordinator for the U.S. Forest Service is housed
8 in my office, in the regional office, here in the
9 Southwestern Region. This is in contrast to the
10 other eight regions of the U.S. Forest Service
11 where that authority and that responsibility has
12 been delegated to the forest supervisors below the
13 Regional Forester.

14 To give you an idea of the Southwestern
15 Region's workload, we have been working on a single
16 repatriation with Hopi, which constitutes 60
17 percent of the agency's work. When this effort is
18 completed, at least 75 percent of the agency's
19 inventoried remains will have been repatriated
20 under this Act. I want to thank the Hopi Tribe for
21 assisting us with meeting this important
22 responsibility. The Coconino National Forest and
23 the Hopi Tribe will be providing a report later on
24 in your meeting to come still.

25 In addition to repatriation, the Forest

1 Service received legislative authority to rebury
2 those same human remains on Forest Service lands
3 under the 2008 Farm Bill and to assist in funding
4 reburial. The Southwestern Region has been a
5 leader within the Forest Service in providing
6 accommodation to tribes for reburial. Our
7 Southwestern Regional policy was established in
8 1994 and provided much of the basis for the
9 legislation and agency-wide guidance on reburial.

10 The Southwestern Region of the agency is
11 committed to both the spirit and legal intent of
12 NAGPRA. We've attempted to demonstrate this
13 through our budgetary allocation, our progress and
14 our willingness and desire to move this effort
15 forward through to fruition.

16 In conclusion, I'd like to thank all the
17 tribes that have worked with us towards this
18 effort. Without the partnership and the
19 collaboration of the tribes, we would never be able
20 to move forward and get to the progress that we've
21 gotten to at this point in time. It's critical.
22 We have a desire. We have a willingness, and we
23 have a commitment to further the goals of NAGPRA
24 and complete this very critical and important work.
25 Thank you very much for allowing me to be here and

1 spend some time with you.

2 ROSITA WORL: Go ahead.

3 FRANK WOZNIAK: Madam Chair – can people hear
4 me? I can't tell from here. Okay. Madam Chair,
5 members of the committee, I want to thank you for
6 this opportunity to speak with you once again. My
7 name is Frank Wozniak. I am the NAGPRA Coordinator
8 for the Southwestern Region of the Forest Service
9 and the National NAGPRA Coordinator, as was pointed
10 out to you by Gilbert. The focus for me today is
11 going to be on the Southwestern Region. There will
12 be a full national report that I will be presenting
13 to you at the meeting in November in Washington,
14 DC.

15 By the end of Fiscal 2011, September 30, 2011,
16 the Forest Service had repatriated 1,096 Native
17 American human remains, 75 percent of those were
18 from Region 3, the Southwestern Region. Also, we
19 had repatriated 17,430 associated funerary objects
20 and 5,307 unassociated funerary objects. We
21 anticipate in Fiscal 2012 – and I'll be giving you
22 a report on that in November, we anticipate several
23 hundred more Native American human remains will be
24 repatriated, largely from the Southwestern Region,
25 as has been the tradition to this point.

1 Mr. Zepeda mentioned the national funding
2 commitment, and just briefly for repatriation –
3 there's also separate funding for reburial, and
4 that's something that Dan Meza will address, but
5 for national commitment to NAGPRA implementation in
6 NAGPRA repatriation funding, the Forest Service
7 received and allocated and obligated \$480,000 in
8 Fiscal 2010, \$390,000 in Fiscal 2011, and this year
9 Fiscal 2012, \$497,000, for a total of – thus far of
10 between 1.3 and 1.4 million dollars. The plan and
11 budget requests have been made and are being made
12 for 2013 and 2014, and this commitment will
13 continue until the process is completed.

14 My focus today, and the focus of the Forest
15 Service today and in tomorrow's session, is going
16 to be on the implementation of NAGPRA by the
17 Southwestern Region of the Forest Service,
18 specifically here by the Coconino National Forest,
19 which is located in North Central Arizona in the
20 general vicinity of Flagstaff, Arizona. This is
21 being done for two reasons: one, because we are in
22 the midst of a five-year repatriation program with
23 the Hopi Tribe that will ultimately in coming years
24 include the Zuni, the Pueblo of Zuni as well. But
25 also because 90 percent of all Native American

1 human remains recovered from National Forest System
2 lands before the enactment of NAGPRA, which is the
3 matters under Sections 5 and 6 of NAGPRA, came out
4 of the Southwestern Region. And the Coconino has
5 the largest portion of that.

6 In this Fiscal Year 2012, we are in the third
7 year of a five-year program for repatriation to the
8 Hopi Tribe of all Native American human remains and
9 funerary objects from the Coconino National Forest
10 that are in collections that existed at the time of
11 the enactment of the statute. This repatriation
12 effort will culminate in Fiscal 2014 with the
13 repatriation and reburial of approximately 1,500
14 sets of remains from a single site in North Central
15 Arizona. With this as introduction, I would like
16 now to turn this matter over to Dan Meza, who is
17 the Office of Tribal Relations person, staff member
18 for the Southwestern Region of the Forest Service
19 to briefly update you regarding reburials.

20 DAN MEZA: Madam Chair and committee, I want to
21 thank you for the opportunity of giving us this
22 chance to give you a demonstration of our
23 leadership's commitment and – towards this
24 important work, in addition to a better
25 understanding of the way the U.S. Forest Service is

1 organizationally structured as it comes to
2 repatriation, which is under NAGPRA, Frank's
3 program, and the Reburial Program, which is under
4 the Tribal Relations Program. My name is Dan Meza,
5 and I'm the Regional Tribal Relations Program
6 Manager for the U.S. Forest Service. In that role,
7 I offer policy advice and guidance to our
8 leadership and the leadership of those 11 National
9 Forests who work with approximately 55 tribes who
10 have interest in the management of the National
11 Forest System lands and grasslands that we
12 administer.

13 When we began this journey with Hopi with this
14 repatriation, it was apparent that the resources
15 were sorely lacking. And so it then turned to my
16 responsibility to work with our national office to
17 secure funding to enable the reburial portion of
18 the work. In 2010, we were able to secure, out of
19 the chief's special fund, \$100,000 for this work.
20 Those funds go to a number of things, consultation,
21 the NEPA analysis, the equipment costs, and we also
22 pay for cultural consultants, their needs for
23 ceremonies, their travel and those type - (portion
24 of comment inaudible) - national office was
25 committed \$205,000, and it was spread out between

1 five individual regions. And the other thing we
2 did at that time is we took three different budget
3 line items in which we felt the work should come
4 out of and we spread that equitably across three of
5 our major budget line items.

6 In 2012, the agency committed to \$190,000, and
7 again recognizing that all of our programs have,
8 you know, contributed to this – this burden on
9 tribes, we've allocated that across six individual
10 regions this year, and the budget line items are
11 spread out between six individual budget items. So
12 I believe our national office is now beginning to
13 understand that this is an ongoing program of work
14 that's important for us, regardless of whether or
15 not it's discretionary. And the idea that we have
16 our national office talking to us on a regular
17 basis. All of the regions, what is your work load
18 in the reburial, I think is very notable. Thank
19 you.

20 FRANK WOZNIAK: I would like now to introduce
21 Craig Johnson, who works on the Coconino National
22 Forest. And at this point, the whole of the rest
23 of today's session and then tomorrow's session will
24 be devoted entirely to the collaboration between
25 the Hopi Tribe and the Forest Service on the

1 repatriation of this – of these remains from the
2 Coconino National Forest. Craig.

3 CRAIG JOHNSON: Thank you, Frank. Good
4 morning, and thank you very much for having us
5 here. My name is Craig Johnson, again. I am the
6 Tribal Relations Specialist for the Coconino
7 National Forest, and I've been working on this
8 position for two years. When I stepped into this
9 position, one of the first assignments handed to me
10 was to complete the reburial of Native American
11 remains. So this has been a very enlightening and
12 very educational experience for me, and I'd just
13 like to talk to you a little bit briefly about some
14 of the logistics that we've had with the reburial,
15 beginning with just receiving the remains in our
16 office has created – had created a problem within
17 different cultural – different cultural aspects.
18 And as a result of that, and having the human
19 remains in our office building, we've had to
20 contact and provide cleansing of the building of
21 the spirits of the dead that we have received.
22 Since then, we have learned now to – when we do
23 receive the remains back from institutions that
24 they will go to the Museum of Northern Arizona,
25 which we're working with. And they are the

1 repository that controls the remains before they
2 are actually reburied.

3 Some of the other problems we've had with that
4 is also making payment to the practitioner to
5 actually cleanse the building. We have a great
6 forest supervisor that supports and will provide
7 any means necessary to complete this project, and
8 one of the things that we did was able to pay a
9 medicine man to come in and have a ceremony for the
10 employees that were affected, including the entire
11 building. So that was a very special event, and
12 that was something that we just never anticipated.
13 So this has just been a learning experience along
14 the way.

15 Additionally, we've had some problems with
16 payment to the spiritual leaders, again because
17 we're having - we're asking - or should I even say,
18 burdening the tribes with this task that now we
19 have a specialist from the tribes come in and
20 actually help us complete the reburial. It's been
21 logistically challenging to get the money through
22 the system the way our system is set up, to
23 actually pay these people directly. Generally, we
24 have a lot of practitioners that don't have banking
25 accounts, and a lot of how the Federal system works

1 is that payment is transferred through automatic
2 payment. So anyhow, we were able to work through
3 all of this, and hopefully at this point now, be
4 able to move forward.

5 Again, this is - actually, we are in the third
6 year of a five-year reburial, and in the - the
7 first year was basically a very smooth operation.
8 We were able to locate a - have a location set up,
9 and that's where I'd like to just talk to you
10 briefly about that, locations. Locations within
11 the forest, we do have the authority to bury
12 remains that were removed from Federal lands back
13 onto Federal lands. But then we also have the
14 challenge of the location and how to protect that
15 location. So through a lot of just challenging
16 ideas, we did decide upon existing archeological
17 sites, and with that we had the authority to
18 protect the area under existing guidelines such as
19 ARPA.

20 So with that, we had the task to go out and
21 examine the area. One of our important, I guess,
22 caveats are that we should be aware that if we're
23 digging in existing archeological sites, we run the
24 risk of bringing up additional remains. So that
25 was where my job as an archeologist is to go out

1 and test the area and to ensure that they are
2 devoid of any subsurface remains. So that requires
3 a couple of days of just planning and testing.
4 Once we've done that, then we actually were able to
5 complete the reburial.

6 And again, this is the second. We've actually
7 completed two years. We're working on the third
8 year and then we'll have a couple of other years of
9 work up into 2014. Also after we've secured the
10 location, then we have the task of continuing to
11 ensure that this area is protected. That's where
12 we have monitoring come in, and we have been
13 collaborating with the Hopi Tribe in setting up a
14 monitoring program. So basically at that level, I
15 think I'd really like to hand that over to Leigh
16 Kuwanwisiwma to continue and express the Hopi
17 perspective in how we've continued to work
18 together. Thank you.

19 LEIGH KUWANWISIWMA: Good morning. Rosita,
20 good to see you again.

21 ROSITA WORL: Good to see you.

22 LEIGH KUWANWISIWMA: And Sherry and Carla and
23 all the folks from the Park Service. My name is
24 Leigh Kuwanwisiwma, and I'm currently the Director
25 for the Hopi Tribe's Cultural Preservation Office.

1 Briefly, as the team mentioned we've been working
2 on planning this repatriation for many, many years,
3 since the tribe formally received notice that they
4 would actually be in receipt of the remains.

5 Tomorrow I'll briefly go into the logistics
6 required to accomplish that. But this morning, I
7 just want to thank the regional office, Coconino
8 National Forest, and members of our cultural
9 advisory team from Hopi to have reached this point.

10 For the record, the Hopi Tribe and Coconino
11 and the Forest Service, in 2014, will have
12 completed the single largest collection of human
13 remains and funerary objects nationwide,
14 specifically about 3,000 human remains and about
15 5,000 funerary objects that we would have put back
16 into the ground. So from the Hopi Tribe and the
17 people, you know, it's been I guess an effort worth
18 its weight in time and planning and to make – to do
19 it properly.

20 Couple of things that I just want to leave for
21 the record as well is that there's one question
22 that the Hopi Tribe, of course, have asked and have
23 had answered, and that's really the – whether or
24 not the Forest Service will legally protect the
25 burial areas in perpetuity. That's (comment

1 inaudible) of many tribes. In this particular
2 case, because of the land status, the legal answer
3 is no, inasmuch as that I think the Hopi Tribe has
4 received reasonable assurance that the agency will
5 make every effort to monitor and protect these new
6 burial sites so that they don't ever again be
7 disturbed.

8 But at any rate, it's been, like Craig and
9 others have mentioned, a learning experience for
10 the Hopi Tribe and for me personally in this
11 particular case. Not only did the Hopi Tribe have
12 to deal with the agency itself, but we also
13 directly and indirectly worked with 11, maybe 10, I
14 don't know exactly, the museums that the remains
15 were also housed in, aside from several museums
16 locally. So that was a logistical task that we all
17 had to join to make sure that everything was
18 accounted for prior to actually receiving it. So
19 again, the Forest Service and Coconino,
20 particularly, our acknowledgement for, again,
21 assisting the tribe in facilitating the reburial.
22 (Native American language.)

23 ROSITA WORL: Does that conclude your
24 presentation?

25 LEIGH KUWANWISIWMA: Yes, Madam Chair.

1 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

2 ROSITA WORL: Well, first of all, Leigh, it's
3 good to see you again. The Review Committee
4 established a subcommittee to look at reburial, and
5 it sounds like the Forest Service has made a lot of
6 progress, and I'm hopeful that you'll share, you
7 know, your written procedures and policies, and if
8 you would share that material with Sherry, who can
9 then distribute it to our committee, I think that
10 would be very helpful to us. So what I'd like to
11 do right now is open it up to our committee to see
12 if they have any comments or questions on your
13 presentation.

14 Go ahead, Sonya.

15 SONYA ATALAY: Well, first I'd like to thank
16 all of you for coming and for your report and for
17 spending the time doing this very important and
18 very good detailed work. I want to congratulate
19 you on the work that you've done, looking forward
20 to 2014 when this major project is completed, as
21 I'm sure – thank you, as I'm sure all of you are as
22 well.

23 My question is more broadly for the Forest
24 Service, so perhaps Frank Wozniak, maybe this will
25 – you'll be the one to be able to answer. But as

1 we were speaking about earlier this morning on the
2 practices of working, agencies working with
3 repositories, museums and other locations, we
4 talked about some of the challenges that I know
5 Federal agencies are having, and I just wondered if
6 since you've had some success here with one of the
7 Federal repositories that you're - or with one of
8 the repositories you're working with, with was it
9 Northern Arizona Museum? If you could also speak
10 about some of maybe the other challenges that
11 you've had more broadly in working with
12 repositories or some of the - if you have a policy
13 of communication in working with repositories and
14 how your - what your practices are, so that perhaps
15 other Federal agencies who are having challenges
16 of, as we said, trying to track down and follow-up
17 with collections, maybe we could learn from some of
18 the positive things that you've had going for you
19 in terms of communication with yourself and the
20 repositories that you work with nationwide.

21 FRANK WOZNIAK: Okay. I certainly would be
22 very glad to respond. I'm going to speak
23 specifically about Region 3, because it's the one
24 I'm most familiar with and also because of the size
25 of the collections. Beyond the numbers of human

1 remains, the size of the collections from the
2 Southwestern Region parallel that in terms of the
3 whole of the Forest Service.

4 In the Southwestern Region, we – it was
5 decided from the very beginning back in 1991 that
6 the – that there were numerous benefits and
7 economies that could be obtained by having NAGPRA
8 reporting responsibilities retained at the regional
9 level. And it was a result of that decision that I
10 was then hired as the NAGPRA Coordinator for the
11 region, to coordinate those efforts and to provide
12 input and assistance to the regional forester, who
13 is the line officer in charge of making those
14 decisions.

15 What we did is from the very beginning we knew
16 of a large number of institutions that held those
17 collections, and then we simply systematically and
18 consistently approached any and all institutions
19 that might have collections, and began in the very
20 beginning to enter into agreements with those
21 institutions, particularly those with the largest
22 collections, to obtain the documentary evidence
23 that we needed to, first of all, develop summaries
24 and, secondly, develop inventories. As a result of
25 which, by the end of 1995, at the deadline for

1 inventories, we had accounted for essentially all
2 of — statistically all of the remains, as well as
3 all of the collections.

4 Now, surprises do occur. There's hardly a
5 year that goes by that an additional collection is
6 not identified and reported to us. None of these
7 are large collections. It will be a handful of
8 remains and maybe a handful of funerary objects,
9 and it's from institutions that we had no idea and
10 which there was no written evidence to indicate
11 that they ever would have been involved on National
12 Forest System lands in New Mexico or Arizona. Two
13 good examples are the University of Nebraska and
14 the University of Iowa. There are no records of
15 permits. There's no records of — published records
16 of activities, but they do have a small number of
17 remains at each place. And this — this just
18 happens. I think that the fact that the regional
19 office made the decision to centralize this effort,
20 and to thereby make it systematic, enabled us to be
21 in the position that we are in.

22 For other regions, the burdens were not nearly
23 as great, even from the — even just initially. The
24 number — the initial number of remains that we
25 estimated — that were estimated to have come from

1 National Forest System lands that they were in
2 collections as of November 1990, the number was
3 somewhere around 2,500 and 3,000 sets of remains.
4 Ultimately, it turned out to be significantly
5 larger than that, about 5,300 sets of remains that
6 were ultimately identified. While it appears to be
7 a large difference, actually it is – you know, it's
8 not a surprising one, because we knew that there
9 were large numbers of remains that had been
10 recovered but were not aware of the records
11 themselves and how many there were.

12 For – in the other regions of the Forest
13 Service where the matter has been delegated down to
14 the Forest Supervisor, that has slowed the process
15 down in certain instances, not across the board,
16 but just in certain instances. And also it should
17 be pointed out that more than half of the National
18 Forests – there are approximately 120 reporting
19 units, there are a larger number of forests than
20 that but it's the whole question is reporting
21 units, is that fully half of those forests have no
22 archeological collections that were in repositories
23 or were held by the individual forests. It doesn't
24 mean their archeological work wasn't done. It's
25 simply that there were no significant collections

1 from – there were no significant sites from which
2 significant collections had been derived. And so a
3 lot of it – and I think the last thing to point out
4 about this is that 98 to 99 percent of all of the
5 collections from National Forest System lands were
6 done by outside entities for purposes that serve no
7 primary purpose of the Forest Service, universities
8 and museums for research purposes. And so we then
9 tackled NAGPRA with our responsibility under
10 NAGPRA, because it's our responsibility to identify
11 those remains and then to consult with the tribes
12 and develop cultural affiliation decisions and then
13 to repatriate. I hope that goes some way towards
14 answering your question.

15 ROSITA WORL: Go ahead, Sonya.

16 SONYA ATALAY: Yes, it does. If I may, just a
17 quick follow up. I'm just curious then with
18 University of Nebraska and University of Iowa, to
19 help us kind of – and other agencies, on this
20 issue, since there were no records, how are you
21 able to then determine that they actually did have
22 collections? How did that process happen?

23 FRANK WOZNIAK: While they were going through
24 their inventory processes for their own
25 collections, they discovered records that stated,

1 in both instances they were from caves on the
2 Lincoln National Forest, and what it was is they
3 had the state, the county, and then the name of the
4 cave. And fortunately, the names of the caves have
5 remained fairly consistent in that region, in
6 Southeastern New Mexico, and we didn't have people
7 be inventive and developing new names on top of old
8 names and no correlations existing as to why – how
9 those were related, if they were related.

10 And the other thing about it is why this would
11 have occurred is that all of this work was done in
12 the twenties and thirties, under what – a period
13 known as the Early Man Studies, where they were
14 interested in identifying the oldest Native
15 American remains to be found in United States, and
16 you go to caves because of preservation. The
17 nation – and Federal lands were then under – being
18 operated archeologically under the Antiquities Act,
19 and the specific requirements were rather vague,
20 shall we say. And formal permits did not exist.
21 It's possible, you know, that just because of loss
22 of records over time, that there were initially
23 permits. But the way we – what we think happened
24 is that the museum or university person who was
25 interested in doing the excavations went to the

1 forest supervisor or the district ranger and said,
2 can I do this, and explained it to them and they
3 were convinced, oh, that seems like a good effort,
4 you know, we need to know about the past. And so
5 they just let them go. Now, it's all been
6 tightened up very significantly since ARPA.

7 SONYA ATALAY: Thank you.

8 ROSITA WORL: Thank you.

9 FRANK WOZNIAK: You're welcome.

10 ROSITA WORL: Do we have any further questions
11 or comments? Go ahead, Mervin.

12 MERVIN WRIGHT, JR.: First I'd like to say
13 thank you for your preservation and certainly
14 displays a good amount of success with your intent
15 to complete this work. You touched on something
16 here in your last response about not having the
17 resources or not having been responsible for the
18 collections that were unearthed, you know, back
19 when they were taken from Forest Service lands.

20 It leads me to a question, probably for Carla,
21 because it - it appears that, you know, Region 3
22 has committed and dedicated funding, you know, for
23 the purpose of repatriation, and has made that
24 commitment and has followed through with it. So
25 when you look at other agencies, be it Bureau of

1 Reclamation, Fish and Wildlife Service, Bureau of
2 Land Management, Army Corps of Engineers, down the
3 line, you may not see the same commitment from
4 those agencies. And so my question is: is there an
5 internal policy, maybe there's a silent policy that
6 states that as long as there's no funding for the
7 specific purpose of repatriation for implementing
8 NAGPRA that those agencies will not conduct
9 activity related to NAGPRA implementation? Do you
10 know of something like that, Ms. Mattix?

11 CARLA MATTIX: I think it's an internal policy,
12 where basically every agency is appropriated funds
13 by Congress for certain purposes, and each agency
14 has its own mechanisms and priorities and
15 directives for spending that money, so each agency
16 sets its own priorities with a budget. And there's
17 no (comment inaudible) policy that says that
18 (comment inaudible) for this purpose; however, if
19 the money is appropriated for certain purposes,
20 there's laws governing how that can be used. I
21 hope that answers your question.

22 MERVIN WRIGHT, JR.: Well, it does, but it just
23 leads me to follow up with a comment that, you
24 know, back when a lot of this activity occurred,
25 and whether or not they have equal amount of staff

1 in those agencies today compared to then, the
2 obligation, to me, remains the same. That if they
3 have twice, three times, four times as many staff
4 today in those agencies than they had when these
5 collections were taken, and today they're saying
6 they don't have money or they don't have resources
7 available to do this, it's unacceptable.

8 And so I'm just saying this as a comment that,
9 you know, when you're looking at the growth of the
10 Government, and you look at back in the forties and
11 fifties, possibly later than that when a lot of
12 these collections were taken, they don't have the
13 same amount of staff available today, as a matter
14 of fact they probably have more. But you know,
15 when you look at the size of the Government - I
16 know you're shaking your head, but when you're
17 looking at NAGPRA specifically, NAGPRA was only
18 enacted in 1990, but before that when all these
19 collections were taken you had a certain amount of
20 staff, and to me the responsibility is still the
21 same. It's equal. And so I think that agency
22 would still need to follow through with returning
23 those collections to the tribes, and I applaud the
24 Forest Service in Region 3 for doing what it's done
25 and definitely a good model that I think all of the

1 rest of the Federal Government should take a look
2 at and follow. Thank you.

3 ROSITA WORL: Any further questions or comment?

4 Well, I also just wanted to again thank you,
5 and I'm especially pleased to hear about the
6 allocation of funding for – in an area where
7 National NAGPRA's funding has remained flat. And I
8 think it might be a good recommendation that we
9 might consider in our report to Congress that we
10 recommend that all Federal agencies, you know,
11 follow suit as USDA and Forest Service. We really
12 applaud you for that effort. So thank you very
13 much for your presentation.

14 LEIGH KUWANWISIWMA: Thank you.

15 ROSITA WORL: Okay. We are near lunch. Madam
16 DFO, do we have anything else that we might address
17 at this point?

18 SHERRY HUTT: I think this would probably be a
19 good time to break for lunch. Might I – we are
20 just right at the top of the hour. Might I
21 comment, Madam Chairman, that we had one hundred
22 people sign into this meeting.

23 ROSITA WORL: Right. Great. That's wonderful,
24 and I want to remind those one hundred people, if
25 you have not had an opportunity to sign up to make

1 public comment, the Review Committee is anxious to
2 hear from the public, from tribes, from agencies,
3 and from museums to hear about your successes, any
4 barriers, and we're also asking you to comment on
5 the dispute process. So if you have not yet signed
6 up, if you would sign up with Melanie, Melanie
7 O'Brien, standing right here, we would appreciate
8 that.

9 And what we'll do now is recess for lunch, and
10 then reconvene sharply at 1:30. Thank you. We are
11 at recess.

12 **LUNCH**

13 ROSITA WORL: We will now call the Review
14 Committee meeting back to order, and we do have an
15 agenda item. But before we begin that, Madam DFO,
16 do we have any issues?

17 **DISCUSSION: ADDITIONAL INFORMATION REGARDING REVIEW**
18 **COMMITTEE CHARTER**

19 SHERRY HUTT: Yes, Madam Chairman, thank you.
20 Make sure I'm on. Am I on, Lesa?

21 Just to clarify something from this morning.
22 You had asked about the Review Committee Charter as
23 it stood in November 2010, and I gave somewhat of
24 an answer, but I have a better answer, if I might.
25 I've checked the dates. The signature on the

1 Charter of the Secretary was November 14, 2010.
2 According to FACA, it is effective upon signature.
3 The meeting then occurred on the 17th and 18th, so
4 the meeting was full and in effect and fully
5 chartered at that time. Perhaps, someone might be
6 confused if they looked at the file date, because
7 once the Secretary signs the Charter it goes up
8 through various places and eventually gets filed
9 and the Charter is good for two years -

10 ROSITA WORL: Is that the fire alarm? The fire
11 alarm is off. Can we find clarification here?

12 SHERRY HUTT: Yes. We'll check to make sure
13 that we're okay. Otherwise, we'll go to the exits,
14 which are right by the bar. All right.

15 We'll go ahead and proceed. The Charter is
16 good for two years from the file date, even though
17 it's effective on the signature date. And just so
18 you know, last week or two weeks ago, I was down to
19 see the folks who do the policy for the FACA
20 committees to let them know that the Charter date
21 ends on November 24, 2012, and that we are meeting
22 on the 27th and 28th, so we have a very close
23 period there to get the Charter on, so we've
24 already put that in play for the 2012 period.
25 Thank you.

1 ROSITA WORL: The Chair thanks the DFO for that
2 clarification. And now if we could proceed with
3 our afternoon agenda items beginning with the
4 presentation, NAGPRA Update from the Bureau of
5 Indian Affairs, and we have Anne Pardo.

6 Welcome, Anne.

7 ANNA PARDO: Thank you.

8 ROSITA WORL: And if you would just go ahead
9 for the record, your name and title.

10 **PRESENTATION: NAGPRA UPDATE, BUREAU OF INDIAN**

11 **AFFAIRS**

12 **PRESENTATION**

13 ANNA PARDO: Sure, Annie Pardo, Museum Program
14 Manager, National NAGPRA Coordinator, Department of
15 the Interior, Indian Affairs. Can you hear me?

16 ROSITA WORL: And if you could speak directly
17 into the mic that would be helpful.

18 ANNA PARDO: Is that better?

19 Good afternoon, Madam Chair and members of the
20 NAGPRA Review Committee. My name is Annie Pardo,
21 and I'm the Museum Program Manager and National
22 NAGPRA Coordinator at the Department of the
23 Interior, Indian Affairs. I appreciate the Review
24 Committee's invitation to present at last
25 November's meeting in Reno. Unfortunately, I was

1 unable to attend on short notice. I did provide a
2 summary of the work that had been done to date by
3 Indian Affairs, and there is an updated – excuse
4 me, and there is an updated summary in your
5 materials.

6 I thank you for the opportunity to come here
7 today to tell you about the work – the NAGPRA work
8 that we have been doing. In Indian Affairs, IA,
9 NAGPRA work was first done within the Division of
10 Acquisition and Property Management. Then in 2004,
11 it was transferred to the Museum Property Program
12 in the Division of Environmental and Cultural
13 Resources, DECRM. This reorganization consolidated
14 the museum program with other cultural resources
15 programs, including the sacred sites initiative and
16 archeological programs, thus allowing for increased
17 coordination and compliance with cultural resource
18 laws and initiatives. Today, the museum program
19 falls under the Assistant Secretary Indian Affairs
20 in the Office of Facilities, Environmental and
21 Cultural Resources, and within DECRM. IA's Federal
22 Preservation Officer Marv Keller is my co-
23 coordinator for NAGPRA work. Marv and I work
24 closely together on all NAGPRA matters.

25 The BIA's 12 regional archeologists are

1 invaluable subject-matter experts and serve as
2 important contacts for working directly with tribes
3 in their regions. Marv and I have provided
4 trainings and briefings to the regional
5 archeologists on NAGPRA to ensure that they
6 understand their responsibilities and are kept
7 current on NAGPRA work. Today we have more staff
8 dedicated to doing NAGPRA work than ever before.

9 IA also consults with other professional staff
10 in our sister bureaus in the Department, as well as
11 archeology, anthropology and osteology staff
12 working at non-Federal repositories. I'm very
13 grateful for the incredible amount of support that
14 they give us and their never-ending willingness and
15 patience in answering my many questions.

16 I'll give you a little background on our
17 history. Indian Affairs has always asserted and
18 continues to assert control over archeological
19 items, including those subject to NAGPRA, that were
20 removed from tribal lands under the authority of
21 Antiquities Act permits issued between June 8,
22 1906, and October 31, 1979. Realizing that there
23 was a need to identify the locations of all of
24 these collections, IA requested and funded studies
25 to identify archeological collections and NAGPRA

1 items. Between 1994 and 2002, the U.S. Army Corps
2 of Engineers conducted research and surveys and
3 produced 3 reports, which identified 61
4 repositories in 12 states as having IA collections.
5 The early NAGPRA work in IA focused primarily on
6 collections in these 61 repositories. We're still
7 working on identifying repositories in about 15
8 additional states. Nearly all of IA's
9 archeological collections are housed in non-IA
10 repositories.

11 My predecessor, Carolyn McClellan, who was the
12 NAGPRA Coordinator between July 2000 and April
13 2003, gave presentations to you in December 2000
14 and again in November 2001, with a few more updates
15 later. Carolyn sends her regards.

16 After 2003, in the absence of a dedicated
17 NAGPRA coordinator, the museum specialist, Emily
18 Palus, along with the FPO at the time, shared
19 NAGPRA coordination duties. During this period,
20 although there was not a dedicated NAGPRA
21 coordinator, consultations with tribes continued.
22 Notices were drafted, reviewed, approved, and
23 published, and human remains and funerary objects
24 were repatriated. The Western Regional
25 archeologist, Garry Cantley, took on many NAGPRA

1 duties in Arizona and Nevada, the two states with
2 repositories that house the majority of IA's
3 collections. Garry was, and continues to be, very
4 engaged with the repositories and tribes in the
5 Southwest in all aspects of NAGPRA work. Garry
6 also serves as an incredibly knowledgeable and
7 helpful subject-matter expert.

8 Other NAGPRA work that went on during this
9 time included a significant repatriation of
10 Snaketown funerary objects to the Gila River Indian
11 Community, as well as a move of Gila River
12 archeological collections from the Arizona State
13 Museum to the HuHuGam Heritage Center. Indian
14 Affairs funded the contract and coordinated the
15 work. Emily had devoted a significant amount of
16 time and effort to the repatriation and the move.

17 The former FPO retired in late 2008, and Marv
18 Keller was hired in January 2010. Marv had been
19 the BIA regional archeologist in the Rocky Mountain
20 Region. I came on board in June 2010. About a
21 month into my new job in Indian Affairs, the GAO
22 report came out asserting that, quote, "BIA has
23 done the least amount of work and has low
24 confidence that all of their NAGPRA items have been
25 identified." I want to address that.

1 During the period in which the GAO staff
2 conducted their study, there was no NAGPRA
3 coordinator at Indian Affairs. The museum
4 specialist position was vacant. The FPO had
5 recently retired, and Marv had not yet been hired.
6 However, all the records and files existed. They
7 documented NAGPRA work at repositories, draft and
8 final notices, inventories, and other NAGPRA
9 information. IA maintained, and continues to
10 maintain, all required NAGPRA information. It was
11 all there, with the exception of information on
12 actual repatriations.

13 There was no requirement in the regulations to
14 track actual repatriations. Acting NAGPRA
15 coordinators at IA had completed the necessary
16 paperwork to transfer human remains, funerary
17 objects, and other items as part of the
18 repatriation process, but sought no additional
19 information on whether the items had actually been
20 repatriated. Since the GAO visit, we have
21 contacted all the repositories with which IA had
22 published joint notices to determine the
23 repatriation status of all the items that appeared
24 in these notices. I continue to maintain contact
25 with all the repositories to follow up and keep

1 track of the repatriations. We report this
2 information annually to National NAGPRA.

3 Between 2003, when the NAGPRA coordinator
4 left, and June 2010 when I took on those
5 responsibilities, Indian Affairs published 26
6 Notices of Inventory Completion and 5 Notices of
7 Intent to Repatriate, accounting for 227 individual
8 sets of human remains, 1,626 associated funerary
9 objects, 3,630 unassociated funerary objects, and 3
10 sacred objects. This was accomplished by IA staff
11 with collateral NAGPRA coordination duties. We do
12 not believe the GAO assertion that the BIA has done
13 the least is an accurate reflection of the
14 situation, not then and certainly not today.

15 With respect to our level of confidence of
16 having located all the repositories, it is likely
17 that there are other repositories housing IA
18 collections that we have not yet identified.
19 However, the initiatives that we're currently
20 undertaking include researching and reviewing
21 Antiquities Act permits at the National Archives,
22 contacting repositories listed on those permits,
23 and determining any transfers of these collections
24 from the original permittees. With 566 federally
25 recognized tribes, more than 55 million acres –

1 surface acres of Indian trust lands, and over 100
2 years of authorized and unauthorized excavations,
3 it has been a daunting task to identify the
4 repositories that currently have possession of
5 collections removed from tribal lands. Given the
6 age of the collections, when documentation
7 standards were not as meticulous as they are today,
8 many repositories themselves are struggling with
9 identifying precise locations and determining
10 whether objects were in fact removed from tribal
11 lands. We're working with these repositories to
12 determine if any of the items in their collections
13 fall under IA's responsibility.

14 The goal at Indian Affairs is the repatriation
15 of all human remains and funerary objects removed
16 from tribal lands and currently housed in
17 repositories. Since I've been with IA, I have done
18 extensive outreach to repositories to reintroduce
19 the museum program, to determine the status of
20 their collections and their NAGPRA compliance. We
21 currently have contracts with three non-Federal
22 repositories – the Arizona State Museum, the Nevada
23 State Museum, the Museum of Indian Arts and Culture
24 – which combined house more than 50 percent of all
25 of IA's archeological collections from tribal

1 lands. We're working with these – we're working
2 with these repositories to ensure full compliance
3 with NAGPRA. We also now have a contract with
4 Northern Arizona University, and staff there is
5 making good progress. I've requested estimates and
6 work plans from several other repositories to
7 complete the necessary NAGPRA work on the IA
8 collections housed at these repositories.

9 Indian Affairs continues to publish joint
10 notices with our partner repositories. During my
11 time at IA, we have published 9 Notices of
12 Inventory Completion and 4 Notices of Intent to
13 Repatriate, accounting for 1,498 individual sets of
14 human remains, 3,547 associated funerary objects,
15 1,400 unassociated funerary objects and 1 sacred
16 object. Today, IA has a NAGPRA policy in the form
17 of an Indian Affairs Manual chapter, and a copy is
18 in your materials. This policy sets out the
19 specific requirements and responsibilities of all
20 Indian Affairs staff in respect to items subject to
21 NAGPRA, whether they're dealing with collections in
22 repositories or with projects or activities on
23 tribal lands with potential for inadvertent
24 discoveries.

25 Early last year I developed a questionnaire to

1 determine the status of collections at non-IA
2 repositories, including information on NAGPRA
3 items. I received responses from nearly all of the
4 repositories queried. I've now surveyed all of the
5 known repositories for a second year, and I'm
6 currently analyzing that information and following
7 up with additional questions. My goal is to find
8 out how much work remains, as well as the nature of
9 that work. Does the repository have enough
10 information to move towards consultation? Have
11 consultations been done? Is there any work
12 currently going on with respect to the IA
13 collections? And so on.

14 Some of IA's most successful repatriation
15 projects have been with the Arizona State Museum.
16 We've had a lengthy relationship dating back
17 decades. The Arizona State Museum, which is the
18 oldest and largest anthropology museum in the
19 Southwest, serves as Arizona's official permitting
20 agency and is the state's official archeological
21 repository. The museum houses more than two
22 million items and associated records from tribal
23 lands, representing the single largest collection
24 over which IA asserts control.

25 Over the years together we have published 20

1 joint notices, accounting for a total of 1,842
2 individual sets of human remains, 9,489 associated
3 funerary objects, 25,506 unassociated funerary
4 objects, and 4 sacred objects. It has been a
5 really wonderful and productive relationship.
6 Later this month, 1,148 individual sets of human
7 remains and 2,827 funerary objects will be
8 transferred to the tribes and 207 individual sets
9 of human remains will be reburied as part of a
10 multi-year, multi-phased repatriation project, led
11 by the Arizona State Museum and the BIA Western
12 Regional Archeologist, and involving the Hopi, the
13 Zuni, and the White Mountain Apache Tribes. This
14 is the culmination of a 20-year process, which
15 began with the completion of a cultural affiliation
16 study by John Welch and T.J. Ferguson and continues
17 with funding from Indian Affairs and an incredible
18 amount of cooperation from all the parties
19 involved.

20 In addition, the White Mountain Apache Tribe
21 has received two repatriation grants, one last year
22 and one this year, from National NAGPRA. These
23 grants have been immensely helpful in both past and
24 in upcoming reburials. We look forward to
25 completing work on this project, as well as future

1 projects, that the Arizona State Museum has
2 identified. Patrick Lyons, the Acting Associate
3 Direction at the Arizona State Museum, and John
4 McClelland, the Lab Manager, Osteology, and NAGPRA
5 Coordinator, and their staff, are just the most
6 amazing and dedicated people that I've ever met,
7 and it's been really an honor to work with them to
8 make these repatriations happen.

9 Indian Affairs has maintained a contract since
10 about 2002 with the Museum of Indian Arts and
11 Culture here in Santa Fe to catalogue archeological
12 collections and to complete NAGPRA work. Julia
13 Clifton, Curator of Archeological Research
14 Collections, and Rachel Johnson, the Collections
15 Manager, have provided very thorough information.
16 I've been reviewing the reports they submitted on
17 the human remains and funerary objects, and I'm
18 hoping that we can move forward with consultations
19 in the near future.

20 We're also nearing completion of work on a
21 contract with the Nevada State Museum to reunite
22 144 individual sets of human remains and the
23 associated funerary objects, which had been
24 separated in the past. We hope to move towards
25 tribal consultations later this year.

1 I want to touch upon our NAGPRA work in
2 Nevada. I understand that you are interested in
3 receiving an update on the human remains recovered
4 from Wizard's Beach. At this time, I have no new
5 information to provide. The Wizard's Beach human
6 remains are currently housed in a secure facility
7 in Reno with very limited access. We have had
8 conversations with Vice-Chairman Wright, and
9 others, and those discussions will continue.

10 You had asked about barriers to full NAGPRA
11 implementation. In this economic climate, in which
12 the Federal Government is constantly challenged to
13 do more with less, to cut programs, we're
14 maintaining a significant level of effort to
15 conduct NAGPRA work. The rate at which we can
16 accomplish this work is directly proportional to
17 the amount of funding that we receive for this
18 program. In September 2011, the Department sent a
19 response to Congress outlining the needs of the
20 bureaus to achieve compliance with NAGPRA. Indian
21 Affairs estimated our need to be an additional
22 765,000 dollars annually over the next seven years
23 to complete NAGPRA work. And a copy of that
24 response is in your materials. Most of the
25 repositories with which I've dealt have been very

1 helpful and cooperative in regard to my request for
2 information. I really do appreciate all the hard
3 work of the staff in these repositories, which face
4 many of the same challenges as the Federal
5 agencies.

6 We have a lot more work to do to accomplish
7 our goal of repatriating all the human remains and
8 funerary objects over which IA asserts control.
9 I've requested work plans and budgets from several
10 repositories. I've been reviewing our files and
11 requesting additional information in order to
12 prioritize the work and try to move towards doing
13 consultations, especially with those items that
14 have good documentation. We will continue the
15 contract work that we have been doing with the
16 Arizona State Museum, the repository that holds our
17 largest collections.

18 I recently hired a new staff curator with a
19 background in archeology. His primary focus will
20 be on identifying repositories that potentially
21 have collections from tribal lands, collected under
22 the authority of Antiquities Act permits, and
23 conducting the necessary research to determine the
24 nature of the collections and status of NAGPRA
25 compliance. He is going to be doing a lot of

1 detective work.

2 We will continue to review the National NAGPRA
3 databases for accuracy, compare their data to
4 information in our files, and correct any
5 discrepancies. We will continue to work closely
6 with other Department of the Interior Bureaus,
7 share information on repository collections, and
8 increase our outreach work with repositories. We
9 will continue to work closely with tribes, and
10 certainly welcome all input and recommendations. I
11 provided my contact information to you, and I can
12 make it available to anyone else who would like to
13 speak with me.

14 I do want to express my gratitude to Sherry
15 and her staff for giving me such a warm welcome
16 when I came to Indian Affairs, for educating me and
17 for always being available to answer questions and
18 provide guidance. Everyone at National NAGPRA has
19 always been incredibly helpful and I find the
20 website to be a wonderful resource.

21 I understand that the Review Committee will be
22 meeting in my town, in Washington, DC, and I would
23 be honored if you let me return and provide another
24 update on the work that we will be doing, or will
25 have done, over the next six months. Thank you,

Lesa Koscielski Consulting
Rapid City, South Dakota
(605) 342-3298

1 and I'm happy to answer questions.

2 ROSITA WORL: Thank you, Ms. Pardo.

3 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

4 ROSITA WORL: Does the committee members have
5 any questions? Go ahead, Sonya.

6 SONYA ATALAY: Well, first of all, thank you
7 for your work. Thank you for your work and thank
8 you for the report, very thorough report. I had
9 quite a few questions written down, and as you were
10 going through I was checking off each one. So
11 there's just a few that remain, so again, thank you
12 very much for that. It's very nice to see that
13 progress happening.

14 So my first question is: obviously the
15 inventories cover remains that have been culturally
16 affiliated, and then the CUI database lists the
17 culturally unidentifiable remains and objects, but
18 my question is if you could give us a sense of how
19 many human remains and associated funerary objects
20 remain under BIA control, which are not listed in
21 either of those two places, if you could just give
22 us a sense of what you believe is there.

23 ANNA PARDO: As far as I know, everything is
24 listed in the databases. Now, like I said, we're
25 still researching, we're still trying to get

1 information. Now, they would be listed under the
2 individual repositories.

3 SONYA ATALAY: Okay. And I have a — my second
4 question is about — I've asked a lot of questions
5 today about repositories and Federal agencies, and
6 trying to understand how things are working. So I
7 was just wondering if you could talk about some of
8 the barriers that you have, if there are any that
9 you've encountered in trying to work with
10 repositories, as you've done a lot of that, working
11 with 61, I believe you said, repositories. If
12 there are any barriers that are there or lessons
13 that you've learned that you'd like to share
14 additionally.

15 ANNA PARDO: I thought about this quite a bit,
16 and how to answer it, I think that the staff in all
17 the repositories, everybody that I've dealt with,
18 is under a lot of constraints just as the Federal
19 agencies are, and initially I may get a response
20 that's based on policy or what they're required to
21 say. But as I push, as I ask more questions, I've
22 found these are just people. I mean, they're no
23 different than I am. They work for an institution.
24 They have policies to which they have to adhere,
25 and they're doing the best they can. So it's a

1 very delicate relationship-building effort, I mean,
2 just as it is between us and the tribes that we
3 deal with. So I think just continuing
4 communication and building trust and relationships,
5 I think, will get us to where we want to be. And
6 naming names and pointing to repositories that have
7 been less cooperative than others, I don't think
8 that's the spirit of what we're trying to do here.

9 SONYA ATALAY: So I wonder if you found that
10 with non-IA repositories that had they generally
11 completed their inventories when you contacted them
12 and were working with them? Did you find that in
13 general the 61 repositories had already completed
14 those or was it the case that many of them had not?

15 ANNA PARDO: I would say in general they have.
16 The quality of the inventories is another story.
17 But again, I think we're dealing with so many
18 mistakes of the past that today's employees at
19 repositories and Federal agencies are struggling to
20 address. I mean, we can't fix what our
21 predecessors did. The best we can do is move
22 forward and do the right thing. So while there are
23 inventories, sometimes consultations didn't take
24 place, sometimes there wasn't enough thorough
25 research, but if you think back to 1995, I mean,

1 there was a huge amount of pressure to complete
2 inventories by then. So there could have been work
3 that was less than precise, and my experience with
4 a lot of the repositories, certainly the Arizona
5 State Museum has been they go back, they go through
6 their collections, they find more documentation.
7 So overall, I would say they're now fixing what
8 should have been done right the first time.

9 SONYA ATALAY: And then my final question is
10 just if there is a policy that IA has established
11 or what specific actions you have taken to ensure
12 that the repositories are – have completed the work
13 that needs to be done, and if you set up policies
14 for that or what kind of specific actions you're
15 taking to ensure that that happens in the future.

16 ANNA PARDO: We can't set a policy to require
17 non-Federal repositories to do anything. We can
18 ask them nicely. We can ask them with a little
19 more pressure after that, but our policy only
20 applies to our own staff. We can't dictate to
21 repositories what to do.

22 SONYA ATALAY: Thank you.

23 ANNA PARDO: Thank you.

24 ROSITA WORL: Okay. Any further questions?

25 Go ahead, Eric.

1 ERIC HEMENWAY: Well, first, I would like to
2 say thank you for coming and presenting. I just
3 wanted a little bit of clarification on a comment,
4 and this pertains to repositories again. That you
5 have this large number of repositories that are
6 housing IA material, do you have a sense on what IA
7 controls in these repositories? Because you made a
8 comment about you're keeping up to date on the
9 repatriation activities of these repositories, and
10 I just wanted to make clear that these museums
11 aren't repatriating material that belongs or is in
12 the control of IA.

13 ANNA PARDO: I'm not sure I fully understand
14 your question, but let me answer it in two parts.
15 One, I survey repositories annually. This has been
16 the second year that I've done it, and I asked them
17 about the - what is within their collections, and I
18 ask very specific questions about NAGPRA. And then
19 every once in a while I'll ask some other
20 questions, and they report back and they tell me
21 the extent of their collections, the composition of
22 their collections, and this is what's under IA
23 control. Let me clarify. And they report back to
24 me, and then I follow up with additional questions
25 if I need clarification, if there was insufficient

1 information provided and so on. That's the overall
2 collections.

3 In terms of finding out about repatriation, I
4 just call them or email them. I mean, I know who
5 the contacts are now, and I ask them what's
6 happened with this, the notice was published. What
7 I do is I keep a database, my own database of
8 notices that were published, joint notices, and I
9 check back regularly with repositories to find out
10 whether or not the items have been repatriated, and
11 I believe there are about - I think there are 34
12 sets of human remains that remain in repositories
13 that were in notices but that the tribes have not
14 yet made arrangements to pick up or there is some
15 other ongoing issues. And that's between the
16 tribes and the repositories, and it's just really
17 waiting on the tribes to make a decision as to what
18 to do. Does that answer your question?

19 ERIC HEMENWAY: Yes, it helps clear up some
20 things, because we - in doing NAGPRA on a day-to-
21 day basis we run into this where there isn't this
22 clarification of who has control. I mean, there's
23 the possession and the control issue, and we've
24 come to this issue where neither the museum that
25 was acting as a repository wanted to claim control

1 and the Federal agency didn't want to claim
2 control. So these items were in limbo and nobody
3 wanted to make a final determination. So I just
4 wanted to get a grasp on, at your agency, if you
5 have, you know, a good, firm grasp on what you have
6 control of and have a final say of.

7 ANNA PARDO: We've asserted control, and I'm
8 not shy about asserting control, over whatever has
9 come off of tribal lands under Antiquities Act
10 permits. And we've published joint notices with
11 repositories. They have possession. We have
12 control.

13 ERIC HEMENWAY: Thank you.

14 ROSITA WORL: Go ahead, Alex.

15 ALEXANDER BARKER: Do any of the other
16 committee members have questions, because mine's a
17 more general question? If there are specific
18 questions –

19 ROSITA WORL: All right. And do we have any
20 other committee members besides Alex who has a
21 question or comment?

22 Mervin.

23 MERVIN WRIGHT, JR.: This might be a question
24 for the solicitors. In a situation where you find
25 that the museum – you know, in your report you

1 stated that there was lack of consultation, and
2 then in that same regard you were talking about
3 agency control and museums not informing – the
4 museum not informing the agency. In a situation
5 where cultural affiliation has been determined or
6 predetermined without consultation, what is it that
7 can be done at this point when there is a
8 collection that is under agency control but the
9 museum failed – one, failed to notify the agency
10 that they were in control of the collection, and
11 two, failed to consult with a tribe to determine
12 cultural affiliation?

13 CARLA MATTIX: Ultimately, it's the agency's
14 responsibility to know what it has control over.
15 So ideally, the museum would contact the Federal
16 agency and confirm with the agency that it has
17 collections that are actually in the control of the
18 Federal agency. But at the end of the day, it's
19 really the Federal agency that has that ultimate
20 responsibility for those collections. So there's
21 not really – if a museum does not inform a Federal
22 agency that it has those collections, there's not
23 necessarily any penalty or anything like that under
24 the statute, because really it's the Federal
25 agency's responsibility. I don't know if you had

1 another part of your question I didn't fully
2 answer.

3 MERVIN WRIGHT, JR.: No, that's fine. Thank
4 you.

5 ROSITA WORL: Sonya, did you have a follow-up
6 to that?

7 SONYA ATALAY: I do have a follow-up to that.
8 Thank you for the question, and I'm just wondering
9 if you're confirming, when you're talking with the
10 repositories, that in fact they have done
11 consultation that when they're determining cultural
12 affiliation or are you checking to see that — is it
13 just that you'll check to see that the inventories
14 have been done and a determination has been made
15 that they're either culturally affiliated or put
16 into the CUI category, or are you actually also
17 documenting and confirming that they have
18 consulted, as required by law, in order to put them
19 into those categories?

20 ANNA PARDO: I'm pretty nosy. I ask a lot of
21 questions, and I won't back down until I get a
22 thorough response. So, no, I want to know
23 everything.

24 ROSITA WORL: Are you — do we have clarity
25 here?

1 SONYA ATALAY: Yes, thank you.

2 ROSITA WORL: Any other questions?

3 I think we're ready for your comment, Alex.

4 ALEXANDER BARKER: I'm not sure if this is the
5 appropriate place, and I defer to the Chair, we
6 also have in our packet a letter to Senator Akaka
7 regarding the Department of the Interior's view in
8 response to a question posed to IA as I understand
9 it, is that correct?

10 ANNA PARDO: It's a follow-up to the GAO
11 report, and all the bureaus were asked to put
12 together a response to what is – what is the need
13 in terms of budget, funding, and a timeline for
14 completing all the work. And I'm referring to IA's
15 response, but I believe all the bureaus responded,
16 and the Department assembled a complete response.

17 ALEXANDER BARKER: Thank you. I apologize. I
18 think I was unclear. We also have in our packet a
19 letter from the Department of the Interior stating
20 the Department of the Interior's position on
21 whether to amend the definition of Native American,
22 and according to the cover letter it was from the
23 Department of Indian Affairs – the Bureau of Indian
24 Affairs, but it is a statement on behalf of the
25 Department of the Interior of the DOI's position,

1 if I am reading it correctly.

2 ANNA PARDO: Are you talking about the "is or
3 was" amendment?

4 ALEXANDER BARKER: Yes.

5 ANNA PARDO: I didn't provide that.

6 ROSITA WORL: What is — I think I saw that in
7 the packet, and —

8 SHERRY HUTT: Yes, it is in the packet.

9 ROSITA WORL: Yes, it was in the packet, and it
10 wasn't clear where that agenda item rested. And I
11 think it might — I don't know that it was related
12 to this issue.

13 SHERRY HUTT: Yes, that was in the Senate
14 hearing that Senator Akaka had invited, and in
15 response to Assistant Deputy Park Service Director
16 Peggy O'Dell's testimony, and then that letter was
17 put forth then. That came through in one of the
18 presentations. We put it in the materials — you
19 may have had that before. I believe I may have
20 sent that to the Review Committee close in time to
21 the time that it was distributed as well.

22 ROSITA WORL: Well, since we've raised the
23 issue, we will go ahead and allow a discussion on
24 this. Go ahead, Stephen.

25 STEPHEN SIMPSON: I was — thank you, Madam

1 Chair. I was just going to clarify that Mr. Barker
2 is correct in that the cover letter to this
3 response to the Senate committee does say that the
4 responses were prepared by the Bureau of Indian
5 Affairs. In fact, it was not only the Bureau of
6 Indian Affairs, it was also other portions of the
7 Department as well that were involved in that.
8 Just as that point of clarification.

9 ALEXANDER BARKER: Thank you. I confess I'm
10 slightly surprised that the Department of the
11 Interior has established a position on this topic
12 without referring the matter to the Review
13 Committee or seeking the view of the Review
14 Committee, since this would seem to be something
15 fairly significant involving the Native American
16 Graves Protection and Repatriation Act. Is there a
17 part of this that I'm misunderstanding or not – or
18 am I uninformed? But I would note that the Review
19 Committee specifically in its report to Congress
20 did not advocate for this change but suggested that
21 Congress should take up the matter because it was
22 deeply problematic and there were strong feelings
23 on all sides.

24 SHERRY HUTT: If I might, Madam Chair, at the
25 NAGPRA hearing that was hosted by the Senate,

1 Senator Akaka chairing the matter, he specifically
2 asked a direct question of the witness. The
3 witness was not prepared to answer at that time,
4 and then it came back to Department solicitors.
5 And all of the bureaus – yes, the programs that
6 were served, but the bureaus in Interior, and they
7 – and they came up with that response. It did not
8 come to the Review Committee; it was a direct
9 response to the Department's position on the issue.

10 ALEXANDER BARKER: And do I understand the
11 Review Committee does not advise the Department on
12 NAGPRA issues, or the Secretary?

13 SHERRY HUTT: When requested, yes. Let me –
14 yes, Counsel?

15 STEPHEN SIMPSON: Yes, when – the Review
16 Committee provides advice to the Secretary at the
17 request of the Secretary. And so it is – under
18 FACA, that's the way advisory committees work and
19 that's the way this one was worked by Congress or
20 set up by Congress.

21 CARLA MATTIX: When one of these Congressional
22 inquiries come in following testimony, we don't
23 have the luxury of putting off Congress and saying,
24 we will respond to you in six months after we,
25 perhaps, can get the views of the Review Committee

1 also. We have to respond to these pretty quickly.
2 So that is why the response went out very soon
3 after the letter from Senator Akaka came in. I'm
4 sure that if the committee has additional views on
5 this and would like to provide those to the
6 Secretary, the Department can certainly consider
7 those.

8 SHERRY HUTT: When the -- when the hearing was
9 established, when it was set, I was contacted at
10 one point by the staff for the Senate Indian
11 Affairs and told that this hearing would occur, and
12 I then asked if they would have an invitation for
13 the Review Committee. At that time -- was that the
14 hearing that Mervin testified but not then on
15 behalf of the Review Committee, so I wasn't clear
16 how that change happened, but I want you to know
17 that, you know, acting as the manager, not as the
18 DFO at that moment, when something comes through of
19 which I am advised, the Senate committee -- this
20 being the Senate committee, I specifically
21 requested that the Review Committee be invited to
22 appear, and there was a Review Committee member who
23 did address the committee beyond that.

24 Previously, there was a hearing at the House
25 the year before, and I had asked for the Review

1 Committee to be invited. At that time, I was told
2 that the schedule was full. But that's — when I
3 get wind of courtesy from any Senate or House
4 staff, that's what I do. I ask them if they would
5 invite the Review Committee. That's the way we can
6 plug the Review Committee in, in between meetings.
7 Other than that, it's as Carla had said. Then
8 there's your report to Congress.

9 ROSITA WORL: Alex, are you satisfied, or do
10 you have follow-up questions?

11 ALEXANDER BARKER: These are issues that I
12 think we need to discuss, but I think we need to
13 get some more information before we can do so.

14 ROSITA WORL: It is an issue that I think this
15 Review Committee will bring back again for
16 discussion. We have — the Review Committee has had
17 positions on this amendment and has reported on
18 that in its report to Congress, and I think it's
19 still a continuing issue that the Committee will
20 continue to address.

21 Are there any further comments? Mervin.

22 MERVIN WRIGHT, JR.: Just to follow up, when I
23 was invited to testify last June, that was the
24 first question I asked was if I was being invited
25 as a committee member or as a tribal leader, and it

1 was indicated that I was being invited as a tribal
2 leader. And at that point it never dawned on me to
3 ask or inquire whether or not the Review Committee
4 was being asked to be invited. It just – I never
5 thought of that.

6 The Review Committee in 2010, October, or
7 let's see – I know it was in the meeting in
8 Florida, the Review Committee did reaffirm its
9 support for the amendment to the definition. I
10 knew that the committee had at one point
11 established a position to support the amendment
12 when Secretary Gale Norton was in office, the
13 Interior Department opposed the definition and so
14 it was that time in my testimony that I felt it was
15 an opportunity to include that as part of my
16 testimony that the Administration should be asked
17 what their position is. And I think that when the
18 Government was testifying, I believe that was also
19 something that came up in their testimony. So the
20 letter in the position – you know, in reading it, I
21 think from my perspective, a simple yes, we support
22 it would have been fine, but it goes in further –
23 it elaborates further into it, so – but just a
24 little bit of background from my perspective.
25 Thank you.

1 ALEXANDER BARKER: Madam Chair?

2 ROSITA WORL: Go ahead, Alec.

3 ALEXANDER BARKER: Thank you, Mr. Wright. I
4 appreciate the clarification. I believe at the
5 last meeting you had pointed out to me that –
6 (portion of comment inaudible) – not to do so, as
7 its last meeting.

8 ROSITA WORL: Sonya.

9 I'm so sorry. We've raised an issue that's
10 probably, you know, beyond your presentation, but
11 if you don't mind, we'll go ahead and continue, and
12 you can still stay there because we may have some
13 follow-up questions.

14 Go ahead, Sonya.

15 SONYA ATALAY: I just wanted to point out that,
16 in fact, this was an issue that the committee did
17 discuss at our previous meeting, and we had some
18 discussion about this in our report to Congress.
19 And as I recall, in our report to Congress, we did
20 ask Congress to consider amending this point. So
21 that was in our report to Congress, in the most
22 recent report. I just wanted to point that out.

23 ROSITA WORL: And I also just wanted to add for
24 clarification, I unfortunately missed that meeting,
25 which is why I know it's going to be again an issue

1 of discussion for our report to Congress. And
2 also, I want to thank – I guess I always call you
3 the BIA, I want to thank you also for serving as
4 our trustee.

5 ANNA PARDO: Thank you.

6 ROSITA WORL: And I appreciate when you act in
7 that capacity. So are there further questions or
8 comments that we have?

9 SONYA ATALAY: Yes, I have – I do. As I went
10 through and scrolled down, I have just two more.
11 Thank you so much for your patience, since we have
12 you here and you've been so generous to give us
13 information. Thank you very much.

14 So one of them is in your report to us, you
15 talk about that IA has requested proposals from
16 other repositories to complete the work necessary
17 to publish notices and repatriate NAGPRA items, and
18 my question on that is a very simple one. What are
19 the – what timeframe have you set up for that to
20 happen, to receive those proposals?

21 ANNA PARDO: I actually just gave them two
22 weeks, and that's because I only last week found
23 out about a potential funding opportunity through
24 the Department, and I jumped on it. It's what I
25 do. So I contacted three repositories that I would

1 prefer not to name right now, and I said, get me
2 something within a week and a half, two weeks tops,
3 so I can compile it into one proposal and try to
4 get some funding.

5 SONYA ATALAY: So does that mean that within a
6 week and a half or two weeks, all 61 repositories
7 will have you – will have some kind of – have some
8 kind of proposal?

9 ANNA PARDO: No, I only contacted three.

10 SONYA ATALAY: Oh, only three. Okay. And for
11 the others, for the remaining repositories, is
12 there a timeframe for when they would give you
13 proposals for having the work completed?

14 ANNA PARDO: Perhaps I misspoke or I wasn't
15 clear. I have not – first, let me say this: right
16 now we are aware of 68 non-IA repositories that we
17 work with. As we find more, or as items are
18 repatriated, we either add them to our list of
19 remove them from our list. I've only contacted
20 several, the ones that hold either really large
21 collections beyond the Arizona State Museum and the
22 Nevada State Museum, and asked them to give me some
23 kind of idea of what it would take to get the work
24 done, timeline, and other resources, so only a few.
25 And I continue to go through the list and evaluate

1 and prioritize. So in the future – I’m sorry, I
2 could potentially contact additional repositories,
3 or if I find out about any more potential funding
4 that’s available.

5 SONYA ATALAY: Okay. And then – thank you.
6 And for the – the final question is, also here you
7 mention that because of the applicability of other
8 Federal laws, the full extent of the responsibility
9 that’s in reference to control of – you say that IA
10 has responsibility and control of most NAGPRA
11 cultural items and archeological materials that
12 were removed from these lands, tribal lands, but
13 because of the applicability of other Federal laws,
14 the full extent of this responsibility is still
15 being determined by the DOI’s Office of the
16 Solicitor. I just wonder if you could give us a
17 little bit more information on that point.

18 ANNA PARDO: I’m not quite sure what the
19 question is.

20 SONYA ATALAY: Well, it’s just responding to
21 the report that I have that says –

22 ANNA PARDO: To the last bullet point?

23 SONYA ATALAY: Yes, the last bullet point,
24 right. That’s right, and I was just wondering – I
25 just wanted more information where you’re saying

1 that applicability of other Federal laws, the full
2 extent of the responsibility of IA still being
3 determined, and I wonder what you mean by that.

4 ANNA PARDO: We are – we had requested an
5 opinion from the Solicitor's Office some time ago,
6 and I think we're closer now that we have been
7 before to getting final written opinion on our
8 responsibility and ownership. That's what that
9 refers to.

10 SONYA ATALAY: Okay. Thank you. Could we –
11 from the solicitors, are we able to get any more
12 information about that from your side?

13 STEPHEN SIMPSON: Yes, Sonya. In 1998, the
14 Bureau of Indian Affairs – the Assistant Secretary
15 for Indian Affairs requested an opinion from the
16 Solicitor's Office on whether the Bureau of Indian
17 Affairs owned items excavated from Indian lands
18 under the terms of permits from – under the
19 Antiquities Act, between 1906 and 1979. That
20 opinion has not been issued, and I have often said,
21 to many people in this room, I am now the fourth
22 Solicitor's Office attorney to be working on that
23 opinion and hope to have it – my general line about
24 this is that I hope to have it done before I
25 retire, which will be in about ten years. But it

1 is – it is an opinion that is towards the top of
2 our list and Annie is correct that we have probably
3 made more progress on it recently than there has
4 been before. But that's the opinion she's
5 referring to. There is also, of course, the
6 question what happens with objects excavated before
7 1906, that opinion has not been requested yet,
8 because they're waiting for the first one first.

9 SONYA ATALAY: Thank you. And again, thank you
10 so much for being so open and helpful with these
11 responses. Thank you.

12 ROSITA WORL: Okay. We're ready to move on,
13 unless we have any further comments.

14 Okay. Thank you very much for coming. You
15 can see that the Review Committee has many
16 questions. We're glad that you're going to be with
17 us at our next meeting in DC, and perhaps you could
18 elaborate further, you know, on some of these
19 issues and discussions, and hopefully we'll have
20 maybe some progress, further progress that our
21 solicitor can report on. And also I think there's
22 another issue, is the whole thing of Federal – of
23 these repositories. And I think it might be
24 helpful for the committee and for all of our
25 constituents is maybe if I could ask our program,

1 national program if they could just kind of take a
2 look at that and provide us kind of an overview
3 general report on it, just so that we all maybe
4 have a better understanding of what we're dealing
5 with here.

6 I know that NAGPRA has a lot of work to do,
7 and as we continue our work we're discovering, you
8 know, some of these issues that, you know, maybe we
9 haven't addressed in the past, but you know, we
10 continue to work on NAGPRA. Our work is not quite
11 done here, but thank you very much for your report.

12 ANNA PARDO: Thank you.

13 MERVIN WRIGHT, JR.: Madam Chair?

14 ROSITA WORL: Go ahead, Mervin.

15 MERVIN WRIGHT, JR.: Just a comment, you are
16 correct in stating that there's a lot of work ahead
17 of us, there wouldn't be a lot of work ahead of us
18 if we can get definitive answers that clarify the
19 direction that needs to be taken on these issues.
20 And you know, from looking at the amendment, you
21 know, some of us call it the "or was" amendment.
22 We're looking at this solicitor's opinion that's
23 gone now through four Administrations, if the
24 answers could be made sooner rather than later we
25 would get a lot of this work done. But because we

1 run through the process of implementation, these
2 are the roadblocks, these are the obstacles that we
3 face, you know, because there's indecisiveness with
4 the Federal Government that just holds up anything
5 that we try to accomplish. And I think with regard
6 to the amendment of the definition of Native
7 American, I think it would be logical to expect
8 that the definition is only going to apply back
9 until 1776, as it was ruled in the Kennewick
10 decision. Thank you.

11 ROSITA WORL: Which is why the amendment was
12 proposed. The Review Committee has been concerned
13 about, you know, the lack of timeliness, and I know
14 we don't - we're not the only ones. I think it's a
15 common public concern, but at least for our part,
16 what we're trying to do is tighten up and set
17 timelines for when we could expect decisions, when
18 we could expect findings to be published, etcetera,
19 etcetera. So we are mindful of it and we will keep
20 trying, you know, as a committee, to try to set up
21 realistic deadlines.

22 So with that, let's move ahead into our next
23 presentation, and we do apologize that we are a
24 little late here, but we will now hear from our
25 NAGPRA update from the Bureau of Land Management,

1 and if, Emily, if you could introduce your
2 compatriots.

3 **PRESENTATION: NAGPRA UPDATE, BUREAU OF LAND**

4 **MANAGEMENT**

5 **PRESENTATION**

6 EMILY PALUS: Of course, thank you, Madam
7 Chairman, members of the Committee. My name is
8 Emily Palus, and I'm the Deputy Division Chief for
9 the Bureau of Land Management's Division of
10 Cultural, Paleontological Resources, and Tribal
11 Consultation in Washington, DC. Thank you very
12 much for the opportunity to present to the Review
13 Committee an update on the BLM's implementation of
14 the Native American Graves Protection and
15 Repatriation Act. With me representing the BLM is
16 Mr. Jerry Cordova, Senior Tribal Coordinator with
17 BLM's Washington Office, and Dr. Byron Loosle,
18 Deputy Preservation Officer, State Archeologist,
19 and NAGPRA Coordinator for the BLM's Utah State
20 Office.

21 Our presentation will consist of an overview
22 and update of the BLM's NAGPRA work, followed by a
23 case study highlighting one of the BLM's cultural
24 property projects involving coordination of law
25 enforcement and the cultural program in addressing

1 looting and trafficking in Native American human
2 remains, NAGPRA cultural items and other artifacts
3 in the Four Corners region. We are grateful to
4 have an hour on the agenda to go through these
5 things and address your questions.

6 The Bureau of Land Management is a multiple-
7 use land management agency with a mission to
8 sustain the health, productivity, and diversity of
9 America's public lands for the use and enjoyment of
10 present and future generations. BLM is an agency
11 within the U.S. Department of Interior that was
12 established in 1946, with the merging of the U.S.
13 Grazing Service and the General Land Office.
14 Mandated by the Federal Lands Policy Management Act
15 of 1976, or FLPMA, the BLM must manage these
16 resources on public lands for a variety of uses,
17 such as energy development, livestock grazing,
18 recreation, and timber harvesting, while protecting
19 a wide array of natural, cultural and historical
20 resources. Today, the BLM manages 245 million
21 acres of public lands, most of which are located in
22 12 western states and Alaska, and 700 million acres
23 of subsurface mineral estate throughout the nation.
24 BLM is a tiered organization with 12 state offices,
25 akin to some agencies' regions, under which there

1 are 46 districts and 133 field offices.

2 Implementation of NAGPRA within BLM is
3 assigned to the Cultural Resources Program, which
4 includes management of the cultural and
5 paleontological resources on the public lands, as
6 well as the associated museum collections, records
7 and data, conformance with Section 106 of the
8 National Historic Preservation Act, and oversight
9 of the BLM's tribal relations. BLM consults with
10 Indian tribes on a government-to-government basis
11 on a whole host of issues and projects involving
12 management of public lands, in addition to our
13 NAGPRA work. BLM's heritage resources include
14 nearly 330,000 recorded cultural properties, 83
15 historic properties listed on the National Register
16 and 38,000 properties eligible for listing, 63,000
17 monitored archeological sites, 390 maintained
18 historic structures, 25,000 recorded
19 paleontological localities. However, only about 9
20 percent of the 245 million acres of BLM public
21 lands have been inventoried for heritage resources,
22 so these figures will increase.

23 In addition to the resources on the lands,
24 there are about 10 million documented artifacts and
25 fossils recovered from BLM lands and now located in

1 3 BLM facilities, 4 other Federal facilities, and
2 133 non-Federal museums and universities. These
3 figures include both cultural and paleontological
4 resources and approximately 70 of those
5 institutions, those non-Federal repositories, hold
6 archeological collections from the public lands.

7 At the policy level, implementation of NAGPRA
8 is coordinated by the Washington office in
9 Washington, DC, under the Assistant Director for
10 Renewable Resources, Planning and the Division of
11 Cultural, Paleontological Resources and Tribal
12 Consultation. This is the division for which Jerry
13 and I work. In addressing NAGPRA, the National
14 Curator and NAGPRA Coordinator, a position
15 established in 1994, provides policy oversight,
16 technical assistance and training to the BLM state
17 and field offices. In addition to NAGPRA, this
18 position provides Bureau-wide coordination and
19 technical assistance for archeological, historical
20 and paleontological collections recovered from the
21 public lands in BLM and non-Federal repositories.
22 I had the honor of serving in this role from 2006
23 to 2011 before taking on my current role as Deputy
24 Division Chief. Unfortunately, our most recent
25 curator left to return home back west, and the

1 position is currently vacant. Thankfully, Jerry
2 Cordova is currently serving as our Acting National
3 NAGPRA Coordinator.

4 The BLM's 12 state directors are responsible
5 for primary operational compliance, with new
6 discoveries of Native American human remains and
7 cultural items found on the lands under their
8 jurisdiction for Section 3 requirements, and for
9 collections of Native American human remains and
10 cultural items removed from the public lands prior
11 to 1990 when NAGPRA was enacted. Staff work is
12 assigned to the 12 state cultural program leads,
13 like Byron. In some circumstances, a cultural
14 specialist in a district or field office may assume
15 responsibility for a collections case; however,
16 generally district and field office specialists
17 address NAGPRA compliance for new discoveries.

18 Compliance with NAGPRA is one of many duties
19 assigned to the cultural specialists. These staff
20 primarily review land-use proposals that may affect
21 historic properties and compliance with Section 106
22 of the National Historic Preservation Act. BLM
23 processes more than 13,000 Section 106 actions per
24 year and issues approximately 500 cultural
25 resources use permits, most of which are for non-

1 collection survey, but not all, but most are for
2 non-collection survey conducted by consultants to
3 land-use proponents to consult 106 review.

4 With an average of 1.5 million acres of public
5 land per cultural specialist, the focus of BLM's
6 management of cultural resources is directed
7 towards 106 compliance, on-the-ground inventory,
8 monitoring, and stabilization of cultural
9 properties. Most proactive cultural work is
10 accomplished through cost-share partnerships with
11 state, local, tribal and nonprofit organizations.
12 To enhance staff capacity to implement NAGPRA, BLM
13 integrated a NAGPRA training module into its
14 cultural resource fundamentals curriculum in 2006,
15 and to further expand staff's understanding of
16 NAGPRA requirements, the BLM developed a one-day
17 workshop in 2009 to improve understanding of key
18 responsibilities and support effective decision
19 making. Thus far, the workshop has been offered 9
20 times in 6 states reaching 150 BLM managers,
21 specialists, rangers, some partner repository
22 personnel, and tribal representatives. Rollout of
23 this training has actually increased the NAGPRA
24 workload, as we have more staff engaged in
25 addressing NAGPRA issues.

1 In implementing NAGPRA, to address Section 3,
2 New Discoveries, the BLM has integrated the
3 requirements of planning for intentional
4 excavations and responding to inadvertent
5 discoveries in its land-use activities, including
6 correlation with NHPA 106 review and notifications
7 under the Archaeological Resources Protection Act.
8 BLM develops plans of action, including those that
9 address small discrete projects, as well as large-
10 scale landscape development projects, such as
11 multi-state pipelines.

12 One of the interesting challenges in Section
13 3, New Discoveries, are inadvertent discoveries
14 made by the recreating public, as recreation
15 increases and once remote places are more
16 accessible. While NAGPRA requires that anyone that
17 suspects they have encountered Native American
18 human remains on Federal lands notify the Federal
19 agency, this is not general knowledge among the
20 public. And if notifications are made, they are
21 usually to the local sheriff or coroner, who may
22 initiate actions under their authority since the
23 BLM has concurrent jurisdiction, meaning the
24 Federal Government shares law enforcement
25 responsibilities with state and local officers.

1 Once the local agency determines that the remains
2 do not constitute a modern person or crime scene,
3 they engage the BLM, which then can initiate
4 NAGPRA. This can sometimes slow the process. We
5 are always up front with tribes when there is a
6 delay with notifications due to that, but it has
7 been an interesting event.

8 It is BLM's policy to leave burial sites and
9 their context undisturbed whenever possible. In
10 fact, most new discoveries do not move past
11 notification and initial consultation as the BLM
12 rather makes every effort to stabilize in place
13 rather than excavate or remove. However, for
14 Native American human remains and cultural items
15 that were excavated or removed from BLM lands,
16 through April 2012, the BLM has published 34
17 Notices of Intended Disposition, documenting the
18 planned transfer of 182 sets of Native American
19 human remains, 5,211 associated funerary objects,
20 and 3 sacred objects.

21 Next, I'd like to talk about BLM's inventory
22 and summary work implementing the collections
23 components of NAGPRA. Per the requirements of the
24 Antiquities Act of 1906 and the Archaeological
25 Resources Protection Act of 1979, collections made

1 from the public lands were deposited in public
2 museums, and today, most BLM collections are
3 maintained in non-Federal museums and universities.
4 BLM works with these repositories and, in fact,
5 relies on them because these museums have the
6 collections documentation, physical access, and
7 intellectual and administrative information
8 necessary for completing inventories and summaries.

9 When NAGPRA was enacted in 1990, the BLM
10 mobilized to locate and document archeological
11 collections from BLM and predecessor agency public
12 lands, the General Land Office. This process was
13 challenging because the collections were so
14 dispersed in multiple museums and there was limited
15 land jurisdiction information in museum records,
16 which was further complicated by changes in land
17 status over time, as Federal lands were conveyed,
18 transferred and acquired.

19 The agency also faced limited access to
20 records on collecting activities, because prior to
21 1984, permits for study and collection of
22 archeological resources under the Antiquities Act
23 and ARPA were issued by the Department of Interior
24 or the National Park Service, not the BLM. The BLM
25 has made great use of the Interior and NPS permit

1 records to help identify potential collections.
2 These records span 80 years and are housed at the
3 National Archives and Records Administration and
4 the Smithsonian's Natural Anthropological Archives
5 in Washington, DC.

6 To date, the BLM has completed inventories
7 documenting 2,065 sets of Native American human
8 remains and 19,840 associated funerary objects.
9 These remains and cultural items were held in five
10 BLM facilities and 36 non-Federal museums in 17
11 states. Of the inventoried NAGPRA items, 1,584
12 sets of Native American human remains and 19,026
13 associated funerary objects have been culturally
14 affiliated with present-day Indian tribes, with
15 notification provided in 61 Notices of Inventory
16 Completion. Fifty-five of the 61 notices were for
17 collections in the possession of a museum and in
18 the control of the BLM.

19 Of the culturally affiliated NAGPRA items,
20 1,074 Native American human remains and 14,261
21 associated funerary objects have been claimed and
22 repatriated. That is about 68 percent of the
23 culturally affiliated remains. The balance of the
24 human remains and funerary objects are available
25 for repatriation upon a claim. For now, the BLM

1 continues to maintain control of the collections
2 that remain curated in the partner museums.

3 The BLM has also inventoried 483 sets of human
4 remains and 623 associated funerary objects
5 determined to be culturally unidentifiable. This
6 includes 2 sets of remains and 202 associated
7 funerary objects that were subsequently affiliated
8 with present-day Indian tribes and reported in the
9 Notice of Inventory Completion. In addition, the
10 BLM has published a Notice of Inventory Completion
11 offering to transfer 10 sets of remains under 43
12 C.F.R. 10.11, Disposition of Culturally
13 Unidentifiable Human Remains. Of the summaries
14 provided to tribes, 446 items have so far been
15 identified as unassociated funerary objects, which
16 have been culturally affiliated and published in 3
17 Notices of Intent to Repatriate.

18 BLM recognizes that inventory and summary work
19 is ongoing. Thirteen of the 26 notices published
20 in the last six years are for remains removed from
21 BLM lands in the possession of museums that as of
22 2006 the BLM was not aware that these collections
23 existed. The BLM continues to work with the
24 museums to locate and document collections that
25 originated from BLM public lands, and as

1 collections are identified, the agency will
2 complete summaries and inventories pursuant to the
3 timelines established in 43 C.F.R. 10.13.

4 Briefly, to summarize some of the complexities
5 in tracking down collections, prior to promulgation
6 of 36 C.F.R. 79, Curation of Federally Owned and
7 Administred – excuse me, Curation of Federally
8 Owned and Administered Archeological Collections,
9 promulgated just a few months before NAGPRA was
10 enacted in 1990. As long as collections were
11 deposited in a museum as directed by the permit,
12 the permit conditions were considered to have been
13 met. There were no requirements or resources for
14 the agency to track, monitor, oversee, or otherwise
15 coordinate with the museums regarding curation.
16 That meant in 1990 when I said that the BLM
17 mobilized to locate and identify collections that
18 was the trigger; NAGPRA was the trigger for us to
19 reach out and find collections.

20 Museums might be in possession of collections
21 that were removed from public lands but unaware of
22 the Federal connection. Such collections include
23 those that were not deposited in the museum
24 identified in the permit or were exchanged,
25 transferred, as was the practice early on.

1 Collections also include those that were removed
2 from public land without a permit, or donated by
3 private individuals or collected by researchers
4 without authorization. If the collections came
5 from BLM or predecessor lands, BLM has control,
6 whether or not we know they exist, whether or not
7 they were removed with or without authorization.

8 Lastly, many museum documentation systems,
9 paper and automated, do not identify the agency as
10 the owner and do not have land jurisdiction
11 identifiers in data systems, making it very
12 difficult to identify Federal collections.
13 Tremendous effort is necessary to sort through
14 collections, confirm land jurisdiction, in order to
15 determine ownership and control. To illustrate,
16 the BLM Alaska State Office, which has published a
17 total of 22 Notices of Inventory Completion to date
18 – they're quite active – has pursued locating human
19 remains and funerary objects collected by the same
20 researcher from the same sites. The BLM has now
21 located institutions in Connecticut, Wisconsin,
22 Alaska, and most recently Oregon. There is not a
23 clear paper trail. It is a hunt.

24 The BLM anticipates continuing to complete new
25 inventories and update existing inventories to

1 account for Native American human remains and
2 cultural items newly discovered in collections as
3 we work with our partner museums and universities.
4 The Government Accountability Office report on
5 Federal agency compliance with NAGPRA provided
6 opportunity for the agencies to submit a needs
7 assessment documenting the tasks, schedules, and
8 resources necessary to complete inventories and
9 summaries for all NAGPRA collections. The BLM
10 highlighted several proactive tasks to locate
11 unknown and unreported collections, including
12 review and update of previously completed
13 inventories and summaries, inventory and certify
14 the existence or absence of NAGPRA items in BLM
15 facilities, resurvey museums with BLM collections
16 for which no NAGPRA material was previously
17 reported, survey museums to locate unreported
18 collections in the control of the BLM, coordination
19 with repositories to compile collections and
20 catalogue data, support tribal participation in
21 consultation activities.

22 Stepping up these activities will require the
23 additional resources identified in the needs
24 assessment. However, the BLM is addressing these
25 tasks within current capacity. NAGPRA work

1 continues with, or without, dedicated resources.
2 For instance, since we are in Santa Fe, I'd like to
3 share an update on the BLM's NAGPRA – on the BLM
4 New Mexico's recent and ongoing NAGPRA work.
5 Ms. Signa Larralde, Deputy Preservation Officer,
6 State Archeologist, Tribal Liaison and NAGPRA
7 Coordinator for BLM New Mexico, regrets that she
8 couldn't be here today, but she shared the
9 following.

10 "BLM New Mexico is revisiting original
11 inventories and the Notices of Inventory Completion
12 that were published in 2001. Additional review of
13 collections shows that the minimum number of
14 individuals needs to be updated because additional
15 collections have been found in museums or items
16 have been acquired through law enforcement
17 activities. No claims were made in response to the
18 2001 notices, and the BLM will be reinitiating
19 consultation with the culturally affiliated tribes,
20 with a goal towards resolution of these remains and
21 to discern the tribes' wishes regarding reburial
22 and disposition of the remains. BLM created a
23 NAGPRA map as part of its GIS data that shows the
24 location of all sites from which the human remains
25 documented in the inventories were excavated. They

1 hope to use this GIS information to help in
2 locating appropriate reburial locations.”

3 I’d also like to share an update from BLM
4 Nevada, and specifically touch on the status of
5 human remains and cultural items recovered from
6 Spirit Cave. At the present time, BLM has not yet
7 resolved litigation that was filed against it by
8 the Fallon Paiute-Shoshone Tribe, over a BLM’s
9 determination that the human remains found in
10 Spirit Cave are not affiliated with any present-day
11 Native American tribe. In response to the
12 committee’s October 2011 request for an update, the
13 BLM Nevada State Director sent a letter for your
14 last – for your meeting last November. That letter
15 summarizes the history to date and current status.

16 Since the litigation has not yet been
17 resolved, I’m limited to these comments. However,
18 I would like to note the following – I would like
19 to note that following the court’s 2006 ruling, the
20 BLM began to respond immediately to the court’s
21 direction. The BLM’s ongoing efforts to comply
22 with the court’s order involve internal review and
23 consideration of existing and new information with
24 legal guidance from the Solicitor’s Office to
25 address the deficiencies noted by the court related

1 to BLM's determination and specifically to ensure
2 that all available evidence is reviewed and
3 considered. For example, in 2008, BLM responded to
4 the tribe's request for an expanded consideration
5 of the evidence by securing funding to support a
6 fresh review by three new and objective specialists
7 in the fields of archeology, biological
8 anthropology and cultural anthropology, to include
9 traditional and ethnographic information. As part
10 of the process, BLM also solicited any new
11 information from the tribes or other interested
12 parties, relating to the determination of cultural
13 affiliation.

14 The BLM is presently looking at the evidence
15 to decide whether its original determination is or
16 is not the most correct finding available. The BLM
17 and the Solicitor's Office are also reviewing the
18 effect of the regulations regarding disposition of
19 culturally unidentifiable human remains on the
20 Spirit Cave case. In consideration of these
21 ongoing processes and solicitor review, the BLM
22 cannot yet provide any definitive statement
23 relating to the human remains and cultural items
24 from Spirit Cave.

25 The last component of BLM's NAGPRA work that

1 I'd like to cover is enforcement of Section 4, the
2 prohibition on trafficking of Native American human
3 remains and cultural items. The BLM's Office of
4 Law Enforcement and Security is dedicated to the
5 preservation and protection of cultural and natural
6 resources on the public lands. NAGPRA is one of
7 many statutes enforced by the BLM, most
8 investigations involving Native American human
9 remains and cultural items involve several other
10 statutes in addition to NAGPRA, including the
11 Archaeological Resources Protection Act, Theft of
12 Government Property, Theft of Tribal Property,
13 Depredation Against Federal Property, among others.
14 These other statutes can apply to burial locations
15 and archeological sites, while Section 4 of NAGPRA
16 is limited to trafficking activities.

17 The BLM Cultural Resource Program provides
18 support to law enforcement on investigations
19 involving Native American human remains, cultural
20 items, archeological sites, artifacts and other
21 cultural resources. Annually, the BLM pursues
22 violations of laws protecting cultural resources,
23 and in recent years the agency has pursued two
24 large-scale, multi-year investigations, "Operation
25 Bring Them Back" in Oregon, and "Cerberus Action"

1 in the Four Corners Region. These investigations
2 have so far resulted in the conviction of 39
3 defendants and the recovery of hundreds of
4 thousands of Native American artifacts. As the
5 collections are released from law enforcement,
6 inventory of the collections will be completed
7 pursuant to the timelines established in 43 C.F.R.
8 10.13, Future Applicability, or following
9 procedures for new discoveries if the materials
10 were removed from public lands after NAGPRA was
11 enacted in 1990. Byron is going to speak
12 specifically to the Four Corners case in just a few
13 minutes.

14 Finally, we need to mention reburial.
15 Although not a component of NAGPRA, reburial is
16 tied to NAGPRA and is often a preferred activity
17 following repatriation or transfer of custody.
18 Prior to September 2006, BLM policy prohibited the
19 reburial of Native American human remains and
20 cultural items on the public lands. This policy
21 position was due to the fluid nature of multiple-
22 use parcels and the concern about future protection
23 for reburied items and potential for disturbance
24 due to land-use actions. However, in 2006, BLM
25 leadership determined that careful selection of

1 reburial locations could help overcome prior
2 concerns and issued new policy that allows
3 authorization of reburials on a case-by-case basis.

4 Reburial is a discretionary authority, and due
5 to the complexities and demands of multiple-use
6 land management considerations, considerations must
7 be made regarding the selection of the site and
8 future management needs. It is BLM's policy to
9 rebury as close to the original location as
10 possible, when possible. It is not always possible
11 due to subsequent or planned development or high
12 risk of natural or unauthorized disturbance. BLM
13 evaluates land selection and status, NEPA and NHPA
14 requirements, tribal access, legal and physical
15 protections and budget concerns. The BLM policy
16 requires that disposition has been concluded,
17 meaning that BLM has completed repatriation or
18 transfer of custody prior to reburial. To date,
19 the BLM has received eight requests to rebury
20 Native American human remains and cultural items,
21 all of which were approved and have successfully
22 concluded.

23 Also, the BLM has reburied human remains that
24 were from lands that have since become BLM lands,
25 and initial discussions are underway regarding

1 reburial of remains that were collected from GLO
2 lands in the 1880s, prior to the Antiquities Act
3 when the Federal Government first started
4 regulating recovery of antiquities for which the
5 BLM does not have control.

6 Following up on the discussion earlier this
7 morning, for the BLM it is not an issue of
8 culturally unidentifiable human remains. It's not
9 an issue to rebury culturally unidentifiable human
10 remains. It is an issue of whether the remains
11 were originally removed from BLM lands. In fact,
12 BLM is working on a reburial of culturally
13 unidentifiable human remains in Wyoming.
14 Establishing cemeteries is not a use recognized by
15 the Federal Lands Policy Management Act that
16 directs our lands management activities. The basis
17 for reburial on BLM lands is that these ancestors
18 were originally buried on agency lands. We are
19 returning those individuals home to those lands.

20 The BLM's NAGPRA activities focus on
21 integrating NAGPRA responsibilities for new
22 discoveries and land-use activities, completing
23 NAGPRA documentation on collections removed from
24 the public lands and held in non-Federal
25 repositories as they are identified, and pursuing

1 protection of NAGPRA cultural items through law
2 enforcement activities. BLM is also – BLM is also
3 engaged with NAGPRA beyond basic implementation of
4 Sections 3 through 7. BLM staff has served on the
5 NAGPRA grants panel, given presentations at the
6 Federal NAGPRA coordinators group, the *NAGPRA at 20*
7 conference, and other national and regional
8 conferences, assisted other agencies in their
9 compliance efforts and provided training, and
10 served on National NAGPRA rulemaking committees.
11 BLM maintains a modest but dedicated NAGPRA effort.

12 NAGPRA requires thoughtful and respectful
13 consultation and documentation to identify Native
14 American human remains and cultural items and
15 determine cultural affiliation leading toward
16 repatriation or transfer of custody. NAGPRA is
17 both bureaucratic and personal. So often we list
18 statistics, use acronyms and discuss compliance,
19 but we all know, NAGPRA is extremely personal,
20 difficult and time-consuming as we navigate the
21 legal requirements to resolve cases. There are
22 complex and somewhat – sometimes convoluted stories
23 behind each NAGPRA case. These stories are
24 journeys. I'm very grateful that Byron Loosely
25 could be here today and share with you a case study

1 of an ongoing BLM project that has a distinct
2 NAGPRA nexus, BLM's investigation into the looting
3 and trafficking of cultural property, including
4 Native American human remains and cultural items in
5 the Four Corners region. Byron.

6 BYRON LOOSELY: Madam Chair and members of the
7 committee, it's my pleasure to be here this
8 afternoon. Typically when we give this
9 presentation, I have other members of our group
10 that assist me. Unfortunately, because of required
11 training and ongoing litigation, our law
12 enforcement officers are not able to be here and
13 our curator has been deathly ill the last few
14 weeks, or last week, and she wasn't able to make
15 the trip. So I will - if there are questions, I
16 will try to answer them, but there may be some
17 information I don't know, and we not be able to
18 answer some of your questions because it's still an
19 ongoing case. If we could start the slide show.

20 What I would like to do today is do a quick
21 overview of the case to provide a little bit of
22 background information, and then we're going to do
23 a brief review of the one case that has been
24 adjudicated that we can talk a little bit about,
25 and then I would like to talk a little bit about

1 the case and how it relates to NAGPRA and some of
2 the issues that have come up because of that.

3 Cerberus is a joint investigation of the FBI
4 and BLM law enforcement where they developed an
5 undercover source that was well integrated into the
6 trafficking and buying and selling of Southwestern
7 artifacts, and they worked him undercover for about
8 a year and a half, buying and selling artifacts.
9 And then in 2009, 24 indictments were unsealed from
10 a grand jury investigation, and we did search
11 warrants in June of 2009 and the case became
12 public.

13 Basically we used the source's information,
14 his background, his contracts to infiltrate this
15 network, which is very close-knit, has a lot of
16 personal contacts, a lot of family contacts. And
17 what we found as we got looking into this is that
18 ARPA is not a real — it's hard to prosecute under
19 ARPA, unless you catch people in the act. Well,
20 what our source was able to do is he was able to
21 get people to show — because part of the mystique
22 of these artifacts is where they came from, and he
23 was able to convince people to show where the
24 artifacts actually came from and then they would
25 produce fraudulent letters that they came from

1 private land or something else. So he had both
2 sources of information as he was preparing this.
3 We also have a variety of videotape audio of him
4 discussing various artifacts, where they came from,
5 how they were found, those kinds of things. Sorry,
6 okay.

7 So our investigation, we ended up purchasing
8 256 artifacts for over 300,000 dollars. The money
9 actually came from the FBI. That was part of the
10 reason they were involved is they have a lot more
11 resources than the BLM does for this kind of
12 investigation. And then we also were involved in
13 at least two illegal, unauthorized excavations.

14 Typically with these kinds of cases, you end
15 up with either the collectors or, most generally,
16 the excavators. We had hoped to actually
17 infiltrate the whole network, because who is
18 actually worse, the people excavating the remains
19 or the collectors that are fueling this. And
20 through these – our source, we are able to actually
21 approach all three levels of this organization,
22 because oftentimes they don't interact very much.
23 The collectors oftentimes don't interact with the
24 excavators. But we are able to even intercept a
25 couple of middlemen that millions of dollars worth

1 of materials went through their hands each year.
2 We also were involved, as I mentioned, in some of
3 these excavations.

4 Because this is ongoing we kind of gave up on
5 trying to keep track of the other states, so in
6 Utah we've executed 14 search warrants, 24
7 individuals were originally indicted. Since then
8 we're indicted three others. Twelve felony and
9 five misdemeanor convictions have resulted. We're
10 still hoping for a few others to be resolved.
11 We've seized ten collections of artifacts, anywhere
12 from just a few to thousands of artifacts from some
13 of these individuals. We have two more
14 collections, smaller collections that still need to
15 be forfeited.

16 Now one of the things that our law enforcement
17 has found is that ARPA and NAGPRA are not very
18 effective for prosecuting cases. In fact, our
19 special agent spent a lot of time putting together
20 a NAGPRA indictment, and then after he spent all
21 this time, he found out that on a first offense
22 it's a misdemeanor, and he kind of threw up his
23 hands at that point and said we're not doing any
24 more of those. We're — the primary mechanism that
25 they've used is theft of Government property.

1 That's been the most effective way of prosecuting
2 these individuals, theft of Government property and
3 theft of tribal property, which is, you know, for
4 those of us that have relied on ARPA for years,
5 it's a little bit discouraging to think of - it's
6 just not worth the effort for our law enforcement
7 folks to prosecute this.

8 One of the things that has been very
9 beneficial for us, though, is the close
10 relationship that's developed by the different
11 resource specialists in the BLM with our GIS, our
12 (comment inaudible), our law enforcement cultural
13 people working together on this project, and we
14 found that we actually get along better than many
15 other states because we've been (portion of comment
16 inaudible) - suicides that have resulted as parts
17 of this case has moved forward. And unfortunately
18 because the case is still ongoing, the BLM and law
19 enforcement in particular have not been able to
20 respond to allegations, charges in the media, those
21 kinds of things. So we see a very one-sided take
22 on the case as it's moved forward, which some day
23 we hope to resolve, but again maybe not quickly.

24 So today I would like to just briefly review
25 the Redd case as an illustration of how various

1 elements of this came together. In June 2009, a
2 search warrant was issued for the Redd home. We
3 seized a variety of computers, journals, letters,
4 GPS units, artifacts, other things when we went
5 into the home. You may have heard the next day
6 that Dr. Redd committed suicide.

7 In July, shortly - actually Jerrica, who was
8 not indicted at the time, and in fact she said, are
9 you here for me too, when the special agents were
10 on the steps said, well, should we be? She wasn't
11 indicted at the time but once we looked at the
12 evidence she was indicted, and then in July, just
13 less than a month after the search warrant, she and
14 her mother Jeanie pled guilty to all of the counts
15 that were charged them. The day after their plea,
16 all the artifacts in the collection were packed up
17 and forfeited to the Government, and then in
18 September they were sentenced.

19 So here is a couple of stills from the
20 undercover operation showing them discussing the
21 artifacts, discussing where they came from, the
22 different things in her collection. Some of these
23 items she's had for over 40 years, and she still
24 remembers the general area or the places where they
25 came from, after all those years.

1 Specifically, the Government purchased or our
2 source purchased some sandals from her, and on the
3 map she provided – the green doesn't show up real
4 well here but on the screen it will show that's all
5 National Forest Service land. In fact, there's no
6 way it could come from any private land. But this
7 is where she put her mark on the map that the
8 sandals had been found, and this is the fraudulent
9 letter saying that they came from private land,
10 that was part of the transaction.

11 When we seized their computer, they have
12 pictures of the sandals on her computer. But when
13 we seized Jericca's computer, we found pictures of
14 her excavating artifacts. And so in the media we
15 hear a lot of, well, you know, if we had just gone
16 and talked to them we would have got just the same
17 results. Doubtful that we would have been – they
18 would have shared these photos with us and the
19 other information we have, but here she's digging
20 up one of these pots and the next one we see them
21 cleaned up and in the home. In fact, on the day we
22 seized them, in the upper right – sorry, right here
23 you can see them in a pot – in their display case.

24 Now, what's also interesting with Jericca's
25 information is she had GPS points on where many of

1 these things came from, and so most of these came
2 from Hoskinini Mesa, which is on the Navajo
3 Reservation. The last photo, you can see the state
4 line, kind of right towards the bottom. This is
5 Utah, and that's the Arizona state line right
6 there. So they're just across into Arizona, but
7 this is - that yellow is all Navajo Reservation.
8 We also seized a lot of letters, journals, other
9 information, maps, documenting, talking about their
10 various finds, where they were going, those other
11 kinds of information that tells about their
12 activities.

13 So in July, they pled guilty - Jeannie to
14 seven felonies and Jericca to three felonies,
15 related to the materials we found. In September,
16 they were sentenced - and this is one of the more
17 disturbing aspects of this case to many tribal
18 members. Our AUSA, our Assistant U.S. Attorney is
19 under some restrictions on sentencing guidelines,
20 but she did recommend that Jeannie receive 18
21 months in prison and Jericca receive probation.
22 However, the judge ordered Jeannie to serve 36
23 months of probation and a 2,000 dollar fine and
24 Jericca was sentenced to 24 months of probation and
25 a 300 dollar fine. But I think the judge suspended

1 Jeannie's sentence after about a year.

2 Seizure of the collections, we list here 812
3 individual lots and artifacts, but it actually came
4 out to several thousand, because basically we had
5 one day to pack all the artifacts, and so we had to
6 move quickly. So a lot of Riker boxes and other
7 things that may have had dozens or even hundreds of
8 individual sherds or other things were just quickly
9 put into boxes, and that's one of the things we're
10 currently doing is unpacking them and making sure.
11 To date, none of the artifacts that we've seized in
12 these forfeitures has been broken, so we feel like
13 our quick efforts actually were very good at
14 stabilizing these artifacts.

15 So the next step with the Redd collection, one
16 of the problems that we're having is a bit
17 convoluted. The BLM cannot seize artifacts, and so
18 actually it's the U.S. Marshalls that technically
19 seized the artifacts, and then they have to
20 transfer them to us. And then so, you know,
21 they're really good at getting boats and cars that
22 are used in drug trafficking and things, and
23 they're kind of set up to sell things. We don't
24 really want them selling these artifacts, putting
25 them back on the market. So it's been a little bit

1 difficult sometimes to work through this process,
2 and so far, only the Redd collection of the ten
3 forfeitures and the two others that we hope to get
4 have been returned to the BLM. But we are trying
5 to find out information. Unfortunately, Jeanie is
6 really the only one that has been court ordered to
7 give a proffer, but we do – we do have the video
8 tapes and other information that we still need to
9 go back through and see if there's other
10 information on where these artifacts came from.

11 So how some of these aspects relate to NAGPRA,
12 one of the first things we have to decide is: is it
13 a new discovery or is it collections. And except
14 for the excavation that occurred, we have decided
15 to treat most of the artifacts that have come in
16 these forfeitures as collections, because we don't
17 know when exactly they were dug up. Now they could
18 have been since 1990, but again some of these folks
19 have been excavating for over 40 or 50 years, so
20 many of them are much older than that. So we have
21 made that decision, unless the Review Committee
22 advises otherwise, we are going to pursue that more
23 from the collection strategy. One of the other
24 things we run into is the timing of the case. As I
25 mentioned, only the Redd collection has been

1 released into our custody. Now we have access to
2 the other ones, but because they're still part of
3 the ongoing case, we haven't really got into them
4 extensively, and so that kind of leads to our third
5 one.

6 The third issue is when we're trying to
7 consult with the tribes it's a little confusing
8 when we talk about the case and say, well, we're -
9 right now we're only talking about the Redds or
10 right now we're only talking about (comment
11 inaudible). What we're thinking, again, about
12 doing is waiting until all the collections are
13 transferred to us and then just treating all the
14 collections as one case. Again, unless you advise
15 otherwise, just because it's confusing to the
16 tribes when we're doing nearly 30 tribes in direct
17 consultation with this, it's a little confusing to
18 go back 10, 12 times and ask about each new
19 collection as it comes into our hands. So that
20 means we may be waiting for another year or two or
21 hopefully not longer before those collections are
22 transferred to us before we kind of get into the
23 final disposition of some of these artifacts.

24 One of the most - one of the more difficult
25 aspects of the case was the decision to go ahead

1 and allow – our law enforcement agents knew that
2 one of the defendants was planning to excavate a
3 site, but ARPA doesn't really talk about intent.
4 It talks about actually doing it, and so they – the
5 leadership, the BLM leadership decided to go ahead
6 and allow them to dig into a site, while we watched
7 them, and it's amazing in 90 minutes, how much
8 damage they were done. We spent four days doing a
9 damage assessment at the site, and you can see here
10 how much they disturbed. In fact, when they left
11 the site, they had backfilled everything, and there
12 was almost no evidence that they had been at the
13 site. They were much more careful than in the old
14 days, dare we say, about making it look like nobody
15 had been there. Some human remains were disturbed
16 during this – during this excavation.

17 Now, the collections contain basically the
18 full spectrum of NAGPRA items. We do have a
19 limited amount of human remains. We have many
20 objects that appear to be funerary objects. We
21 have some sacred items, and we possibly even have
22 some items of cultural patrimony. In fact, for me
23 as an archeologist, especially in the evidence,
24 there are items that I've never seen before and
25 it's just pretty amazing.

1 But part of our working with the FBI and our
2 BLM law enforcement was to teach them how to deal
3 with these artifacts that are coming in, because a
4 lot of them, they actually shipped so they could do
5 other charges about mailing and trafficking of
6 artifacts, and so many of these did not necessarily
7 come in well-insulated or properly cared for ways.
8 And so we had training with the agents and we also
9 had a curator, Kara Hurst, our curator that's been
10 working to help secure the evidence and deal with
11 those items that came in.

12 And then as I mentioned, our artifact
13 seizures, which usually happened very quickly. We
14 had large groups of agents, curators, and
15 archeologists participate in these. We
16 photographed all the items that were forfeited and
17 tried to keep track of them with sort of a
18 minimalistic system as they were boxed and
19 packaged, so we could take them back to our
20 repository. And speaking of repository, we have a
21 temporary repository in Salt Lake, where all these
22 artifacts are being housed right now, under DM 411
23 standards, and we will maintain them there until
24 permanent disposition, either returning them to
25 tribes or placement in a repository, formal

1 repository.

2 One of the things that's actually sort of
3 surprised us in the last couple of months is how
4 much of these artifacts are actually fakes and
5 replicas. In fact, a TV show recently approached
6 us about one they'd found on the open market. And
7 so it's interesting, and so these things that we
8 would call funerary objects, these effigy figures,
9 they are all completely fake. They're made from
10 plaster. In fact, the individual demanded some of
11 them back because he admitted that they were fake.
12 But we found like this ladle most of the handle has
13 been replaced. This ladle, actually only about
14 this portion of it right here is original. Some of
15 these mugs had rattles or effigies inserted on
16 them. It's been sort of surprising to us how much
17 work has been done. Projectile points that may
18 only have the base original that they've added on
19 to, to increase the value make these much more –
20 worth a lot more than they really are based on
21 what's been found.

22 We have done extensive tribal consultation
23 because we know the tribes are very vested in this
24 endeavor, and we've been talking to them, even
25 before the collections were returned to us. So for

1 instance, in February of 2009, our state director
2 hosted an all tribes meeting in Salt Lake, where we
3 had several tribes come. After talking with her
4 with the attorneys, law enforcement, we went over
5 to the repository. They were able to see some of
6 the items there. Our state director went to the
7 Navajo Nation in 2010, visited with leadership down
8 there. We've also sent out a number of letters.
9 Some of our most intense negotiations in tribal
10 consultations actually involved a number of
11 historic artifacts that were – the court ordered to
12 be returned to one of the defendants. And so we
13 wanted to make sure that we weren't returning
14 anything of sacred or ceremonial importance before
15 those were returned.

16 This last year we met with All Indian Pueblo
17 Council. We visited the Hopi. We also hosted two
18 sessions at the Anasazi Heritage Center in Delores,
19 Colorado, where a number of tribes came and we
20 showed them pictures and talked about some of the
21 different artifacts. Right now we're trying,
22 focusing more on care and handling of the objects
23 and maybe classes of objects that they may have
24 concerns or an interest in.

25 So we are going to follow ARPA and NAGPRA as

1 to the disposition of these artifacts, again, once
2 they are transferred to us. So those materials
3 that came from tribal land, for instance, over a
4 hundred – we've been able to verify that over a
5 hundred of the Redd artifacts came from Navajo
6 lands, and so they will go back to the Navajo,
7 Materials from state or Forest Service land are
8 going to go back to those agencies so that they can
9 deal with them. The other ones, that we can't
10 determine where they came from or they came from
11 BLM lands, we will use NAGPRA to determine their
12 disposition. Or if there's no interest, we will
13 use them for either displays or educational or
14 interpretive programs. In fact, some of the
15 artifacts from the Navajo Nation, we've talked with
16 them. We've had extensive discussions with them
17 about using – because Jericca's case is so
18 interesting and shows the value of some of this –
19 using some of those artifacts in an education or
20 interpretation outreach because they don't have a
21 prehistoric museum to deposit these artifacts in.

22 So we feel like some of our main goals have
23 been accomplished with this project. We hope to
24 limit the looting of new sites through this. We
25 did see a decrease at the beginning, or at least

1 people were thinking before they went out, as with
2 any time something big like this happens, there is
3 a decrease and then it kind of trickles back in.
4 But we have had a lot of artifacts turned in
5 in dishonestly, or either more openly people are
6 nervous about Grandpa's collection that he's had in
7 the basement for, you know, 50 years. They've
8 brought them to us. So we have seen more awareness
9 to — of these.

10 We're trying to reduce the number of
11 artifacts. When we talk about some of these
12 artifacts, most of the anthropologists say, that
13 sounds like a kula ring (phonetic). Many of these
14 artifacts have been in circulation for decades and
15 they can actually trace who has owned or who has
16 had possession of some of these artifacts. And
17 what's interesting is artifacts that came from
18 published excavations or from museums have a much
19 greater value than artifacts that came from an
20 unknown location. And so we've actually been
21 involved in some artifacts that are a little bit
22 uncomfortable because they are pictured in a
23 professional publication.

24 One of the things we're hoping now, especially
25 after we've looked, is cut off the market and

1 reduce demand, and I think our discovery of how
2 many of these are fakes and replicas, I think, will
3 help us even address that more. If word gets out
4 that a lot of this that's being peddled is not real
5 or it's been improved significantly to increase the
6 value, I think that may change some of these.

7 Over the coming years we hope to repatriate
8 many of these artifacts. Others will be curated in
9 an approved repository, and we will be doing a lot
10 of outreach and education. Eventually, law
11 enforcement, the case will conclude, and we'll be
12 able to come more into the public and discuss the
13 aspects of this case and try to educate the new
14 generation, but even some of the older folks, about
15 what is really going on and why it's important, you
16 know, that sort of personal connection. How it is
17 hurting individuals to have this looting going on.
18 You know, the cartoon from the Salt Lake Tribute
19 talked about looting a pioneer cemetery, you know,
20 how would your grandfather feel? Well, you know,
21 in Utah, we don't necessarily have that personal
22 connection with those prehistoric cultures and
23 somehow we need to make this more personalized.
24 And that's why it's very important to bring in the
25 Native voice once we start our outreach and so that

1 pain, and I heard the word "anguish" earlier today,
2 that people feel about this is broadcast, and
3 people understand and gain a little bit more
4 appreciation for what's happening. But that
5 concludes our formal presentation.

6 ROSITA WORL: That concludes your report?

7 EMILY PALUS: Yes, that concludes it. Are
8 there any questions or comments?

9 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

10 ROSITA WORL: Very thorough, a very thorough
11 and informative report. Does the committee have
12 any questions or comments? I know that we are at
13 break time, but I think we should go ahead and
14 conclude this one with any questions or comments?

15 Go ahead, Sonya.

16 SONYA ATALAY: Yes, I'm going to ask the same
17 question that I asked earlier of the BIA, which is
18 again notices cover culturally affiliated remains
19 and the CUI database lists the culturally
20 unidentifiable remains and objects, but I'm
21 wondering how many human remains and associated
22 funerary objects remain under BLM control, which
23 are not listed in either of those two places, if
24 you're aware of those numbers.

25 EMILY PALUS: Of course, of course, and I'd

1 like to make one clarification too. The BLM is
2 working with the National NAGPRA Program to clarify
3 and reconcile the data that's in the publically
4 available databases to ensure that it is correct
5 and reconciles with the BLM's records, and they've
6 been very great to work with in ensuring that the
7 data that is – that is shared. So there are some
8 inconsistencies that we are working to address.

9 Nearly all of the known collections from BLM
10 lands have either been listed in inventories and
11 published in Notices of Inventory Completion.

12 There are no culturally affiliated human remains
13 and associated funerary objects in inventories for
14 which a notice has not yet been published.

15 However, we are working on a couple of – on an
16 inventory of a collection where inventories are to
17 be done in consultation with Indian tribes, and
18 this collection is of a particularly sensitive
19 nature, and we are working at the pace that the
20 tribe has requested.

21 One of the concerns, if I can share
22 generically without going into details, one of the
23 concerns that this community had was that once the
24 inventory was submitted and notice published that
25 they had to go and pick up everything immediately,

1 and so they said, we're not ready to do that. And
2 so we've been working through the consultation
3 process and identifying that it is our
4 responsibility to complete the inventory and
5 publish the notice. Nothing in NAGPRA compels them
6 to make a claim immediately or if ever. It is on
7 their timeline, but we needed to work through some
8 of those rules and responsibilities. So we are
9 working on an inventory and hope to have that
10 finalized and submitted shortly and the Notice of
11 Inventory Completion published, and then the
12 culturally unidentifiable human remains.

13 But as mentioned in my presentation, and I
14 think you've touched on it a couple of times today
15 and several of the presenters have addressed, we
16 recognize the work is ongoing and the GAO asked us
17 when we would be done, and it was an uncomfortable
18 moment because as NAGPRA practitioners we know we
19 won't be. When we learn about collections, when we
20 find collections, working with repositories, some
21 collections have come to our attention because
22 tribes have brought them to us and said, hey, this
23 museum has this collection and, no, that's from BLM
24 land. So we recognize that it's ongoing, but most
25 of these instances are smaller collections but I

1 don't think that that changes the workload any, and
2 so we address them as they come up.

3 SONYA ATALAY: Thank you. And do you have a
4 timeline that you've put forward to the 133
5 repositories that are holding the BLM collections
6 for when they might get some kind of a work plan to
7 you and when you can expect that work plan and when
8 you can expect that work might be done?

9 EMILY PALUS: The 133 repositories include
10 fossil collections, too, so that wouldn't, but it's
11 more about 70. I really admire Indian Affairs
12 reaching out and requesting work plans. The plan
13 that we laid out in the needs assessment is working
14 bit by bit with repositories. There are museums
15 and universities that we have very close working
16 relationships with. There are those for which the
17 collections were deposited in 1920 and were – some
18 repositories are wonderful to work with. Others
19 will not talk to us unless we provide funding for
20 their time. We are focusing on those – working
21 with those museums that are most readily willing to
22 work with us.

23 In addition to NAGPRA compliance, the
24 Department of Interior stewardship of all museum
25 collections has been an issue and recently reported

1 on in an Office of Inspector General audit. It is
2 recognized that building relationships with
3 repositories is key. The BLM are initiating or
4 have been now for several years now trying to
5 establish Memoranda of Understanding with
6 repositories that hold collections. These are
7 nonfinancial arrangements that delineate the roles
8 and responsibilities basically, but establishing
9 some kind of formal relationship between the BLM.

10 We have no dedicated staff for collections or
11 – in NAGPRA, with the exception of the National
12 NAGPRA Coordinator and National Curator position,
13 which is currently vacant. So this work is done as
14 the state archeologists can attend to it. I've
15 seen just a tremendous willingness and interest on
16 the part of the 12 state archeologists and the
17 field office archeologists to address NAGPRA. Time
18 is an issue, but as I mentioned earlier we are
19 working very hard within our capacity. And the
20 needs assessment did identify additional resources
21 that would step up the process. The 2012
22 President's Budget did include the additional
23 funding I needed to address a lot of these issues;
24 however, it was not enacted in appropriation.

25 SONYA ATALAY: Thank you.

1 ROSITA WORL: Do we have any further questions
2 or comments? Alex.

3 ALEXANDER BARKER: Again, thank you for your
4 presentation. A couple of times you asked whether
5 the Review Committee had opinions of whether you
6 should undertake repatriations piecemeal as
7 materials were returned to the BLM or whether you
8 should wait and treat it as a single collection.
9 What's the preference of the tribes involved?

10 BYRON LOOSELY: The tribes, as far – for them
11 it's a little bit confusing to have these
12 individual collections. So I think they would
13 prefer – they would prefer to have them right away,
14 but they would also prefer to have it as one. And
15 so that's part of our quandary. Yes, we'd like to
16 start right now with the Redd's, but it's going to
17 be confusing if we start now and then we have to do
18 the 11 that are coming forward. So again, we're
19 kind of thinking the kind of compromise is to do it
20 all at once so it's not as confusing to them.

21 The other issue is several of these tribes
22 would like to visit the repository and look at
23 these artifacts, and if we do that piecemeal,
24 that's multiple trips to Salt Lake, and many of
25 them can't do that. They kind of need to do one,

1 one or two trips to Salt Lake so they can look at
2 these things. So again, those kinds of resources,
3 it would be better just to have them do it all at
4 once.

5 ALEXANDER BARKER: That's the view of the
6 tribes involved?

7 BYRON LOOSELY: Yes, that's the view of the
8 tribes.

9 ROSITA WORL: Any further questions or comments
10 on that?

11 I guess — I guess BLM was asking for our, you
12 know, our position on that, and I'm sensing that if
13 the tribes are concurring with that that we
14 certainly wouldn't have an issue. We can make it
15 an issue if we want to, but I don't know that I
16 hear anyone wanting to make it an issue, as long as
17 we have good consultation ongoing with the tribes.

18 Merv.

19 MERVIN WRIGHT, JR.: Just going back to your
20 slide, collection versus discovery, and you know,
21 it's pretty clear what the law says, you know, the
22 discovered after November 16, 1990, NAGPRA would
23 apply. And I believe that your slide also said
24 that it involves the timing of the release from law
25 enforcement to BLM control. We've got some issues

1 in Nevada where these collections were looted prior
2 to 1990 and have come into possession of the BLM
3 after 1990, and they're treating it as a NAGPRA
4 collection. So maybe you can – my question is can
5 you give us the reasons why it's treated this way?

6 EMILY PALUS: Well, our – I'll jump in and
7 Byron can follow. Our understanding of how the law
8 reads is that Section 3, New Discoveries, applies
9 to Native American human remains and cultural items
10 discovered on Federal or tribal land after 1990.
11 So that's – that – if the human remains and
12 cultural items were taken from Federal land prior
13 to 1990 and then came in to the possession of the
14 BLM after 1990, they were – they were – we would
15 treat them as a collection because they were
16 recovered from the land prior to 1990. One of the
17 other thoughts here too, as Byron said, there are
18 items for which we don't know. We don't know when
19 they were taken and we don't know where they were
20 taken from, and in some cases we know they were
21 taken from Federal land but we don't know when.

22 The Sections 5 through 7 of NAGPRA, the
23 collection side, have more regulation to them, and
24 so in discussion there's more of a – there's the
25 publication of the *Federal Register* Notices, which

1 is a national view, as opposed to the newspaper
2 notices. The listing of inventory and the summary,
3 that format and the regulatory approach seemed to
4 be a very careful, thoughtful, and procedural
5 process that seemed to fit. No matter what the BLM
6 wants to comply and comply with the law and when we
7 can identify whether it's new discovery or
8 collections, we will go that route. As Byron
9 mentioned, the human remains that were disturbed
10 and some excavated from that site that he
11 referenced, those are clearly a new discovery and
12 are handled under that with a plan of action and a
13 Notice of Intended Disposition, etcetera. I hope
14 that answered your question, and Byron, if you want
15 to add anything.

16 ROSITA WORL: Do we have any further – go
17 ahead, Eric.

18 ERIC HEMENWAY: I'd just like to raise one
19 concern over the last two presentations, and this
20 is concerning, once again, repositories. But it
21 seems, correct me if I'm wrong, but that a lot of
22 responsibility on managing these collections is
23 being put on the museum that's acting as a
24 repository that just has possession and not
25 control. So as a tribe that's doing NAGPRA we

1 contact the Federal agency and say we don't have
2 this, the files on hand, we don't have anything in
3 our control, you would have to contact this museum.
4 And then museum would say, we're not doing anything
5 until, you know, we receive help from the Federal
6 agency or we have some type of funding that's going
7 to help us move this along. Once again, we're
8 stuck in this limbo of what to do, who to contact.
9 And it's not the responsibility of the museum to
10 manage these collections; it's the responsibility
11 of the agency.

12 EMILY PALUS: There is no question that this is
13 a very, very difficult situation, and it's that
14 much more disturbing that the process is delayed,
15 tribal representatives are frustrated because of
16 this, who do you talk to? Who's on first? I think
17 some of the things that could help would be
18 clarifying what does "control" mean and what does
19 "possession" mean and what does that mean in terms
20 of roles and responsibilities.

21 There are some repositories that, as I
22 mentioned, either have been fantastic to work with,
23 either at their own expense, with some agency
24 funding, but look at it as a cooperative
25 arrangement because what is the ultimate goal?

1 It's completion of these inventories and
2 repatriation. And it is frustrating too for – some
3 of the agencies might be based in Alaska and
4 talking to a museum on the East Coast and trying to
5 gain information. And this is all going on so that
6 we can come to the table with tribes with
7 information. So there's no question that it is
8 difficult.

9 As I mentioned, I think there are some museums
10 and I really should defer to a museum
11 representative to address this, but who have said,
12 well, they're from Federal agency land so we're not
13 going to deal with those yet. We've had a couple
14 cases in the last couple of years where that was
15 the position of the repository, but we didn't even
16 know that the collections existed. It's very
17 important for us to act when we become aware of
18 these collections.

19 I'll share the caveat that no one is dedicated
20 to this work, so it is within, you know, the
21 current capacity, but we have a lot of NAGPRA cases
22 ongoing for working through – working on the
23 inventories, working with the repositories just to
24 find information. And I really do have a lot of
25 concern for tribal representatives who can't seem

1 to get past – can't seem to be talking to the right
2 person, and so I'm grateful that the Review
3 Committee has taken an interest in this issue and
4 look forward to some additional conversations for
5 how we can all work together, museums, agencies and
6 tribes, towards this.

7 I don't know if that's a wholly satisfactory
8 answer, so I apologize, but I certainly recognize
9 the frustration. And again, understanding
10 responsibilities and recognizing that – that, as I
11 mentioned before, with or without dedicated
12 funding, we are moving forward and are making
13 progress and are trying to address things as they
14 arise, and we recognize that we will continue to be
15 publishing new notices under future applicability.

16 ERIC HEMENWAY: Thank you.

17 ROSITA WORL: Are there – go ahead, Sonya.

18 SONYA ATALAY: If I could ask just another
19 follow-up question, which is: with regards to this,
20 are there – you mentioned in your presentation
21 surveys. You used the word "surveys," I think it
22 was, and "reviews," of collections and
23 repositories, and I'm just wondering what that
24 means. I mean, is there an actual ground truthing,
25 I mean, in the sense of are you going there and

1 visiting and saying, these are the collections,
2 these are the numbers, that's what we've got in
3 inventories, that kind of comparison, or do you
4 have a sense? I mean, as my colleague Mr. Hemenway
5 is asking that there are repositories that have
6 collections that they have not spent the time
7 inventorying because perhaps they feel they don't
8 have the responsibility to do so, although the law
9 says possession or control.

10 EMILY PALUS: Yes, the term "survey" can be –
11 can be used loosely. I will say that it's part of
12 the BLM's broader collections responsibility, so
13 the BLM has been stepping up coordination with the
14 repositories. We have a responsibility for
15 assessing condition of collections. It's a
16 strategic plan measure, don't want to get into
17 widget counting. But we do have BLM staff visiting
18 repositories now and doing a condition assessment
19 on a five-year basis. This is a Department of
20 Interior directive through the Interior Museum
21 Program, and all of the agencies in Interior are
22 working on this, especially those that have a
23 model, such as Indian Affairs and BLM and others
24 where most collections are in repositories.

25 We are also initiating a survey, with the help

1 of the Army Corps of Engineers Mandatory Center for
2 Expertise in Archeological Curation. They've done
3 a number of studies. Indian Affairs mentioned it,
4 that BLM actually had a study done in '99, trying
5 to identify collections from BLM lands that are in
6 Eastern repositories. And so we're initiating a
7 survey with their help through an interagency
8 agreement to fund them to ask a number of questions
9 of repositories known to hold BLM archeological
10 collections. A section of that survey involves
11 NAGPRA.

12 And if – and in some cases, NAGPRA inventories
13 have been done and submitted, and when I mention
14 going through the NAGPRA inventories that have been
15 posted, you know, the repository may not realize
16 that a locale is BLM, but the state archeologist,
17 and I dare say for me, some locales I certainly
18 immediately recognize as BLM now. And in fact,
19 that's how we found a collection from Oregon from
20 Alaska that was in those inventories. Also, I
21 think some repositories have been, you know,
22 relying on the Federal agency to conduct the work,
23 and so it's kind of across the board. What we
24 really need is kind of a status assessment of where
25 we are, so that we can roll out this plan. And

1 again it is coupled with our overall collections
2 responsibilities.

3 And I just wanted to restate, we are so
4 grateful for the information that the museums and
5 universities do provide. My colleague referenced
6 that we cannot make them do anything, and a lot of
7 — and so we are grateful for what they are able to
8 provide. And also a lot of these collections,
9 these materials that were collected in 1906, and
10 certainly through — prior to the National Historic
11 Preservation Act, were collected by researchers
12 associated with the institution. And the museums
13 have had sole access, pretty much, to the — and
14 immediate access to those collections, and they've
15 been used for research, masters studies,
16 dissertations. There's no question that the
17 agencies rely upon the museums quite a bit to
18 provide curatorial services, but it is mutual
19 beneficial relationship and these repositories —
20 these collections are largely in repositories
21 because the permittee had placed them there, because
22 that individual was affiliated with the
23 institution. Things changed quite a bit when we —
24 in a post-National Historic Preservation Act/106
25 environment. But a lot of the sleuthing or the

1 more complicated collections in determining
2 ownership control, land jurisdiction, are the older
3 historical collections that were made as part of
4 large university and museum research and
5 investigations.

6 SONYA ATALAY: Well, thank you again, and I
7 guess my final – and it's a comment, not a
8 question, although it's in the form of a question,
9 which is: it does make us ask what does control
10 really mean if, as you say, you can't make
11 repositories do anything, although they have
12 collections that you have control over, then what
13 does control mean? Thank you.

14 ROSITA WORL: Thank you very much for your
15 presentation. Go ahead, you're excused – I'm so
16 sorry, go ahead. Go ahead, Cissy.

17 LINDALEE FARM: Thank you very much for a very
18 thorough and thoughtful report. I want to go back
19 to something that you said at the very beginning of
20 your report about the reburial of human remains on
21 BLM land and – done by a case-by-case basis. And I
22 want to know how BLM is treating the liability
23 issues, which were raised this morning, and the
24 protection in perpetuity issue, what does BLM take
25 as its position?

1 EMILY PALUS: Well, certainly, and I'll begin
2 with it depends. Every case is different. The
3 selection of the reburial location is the most
4 important decision in considering a request to
5 rebury because of BLM's multiple-use land
6 management mandate. And so the locations that have
7 been identified for the specific requests to date
8 were carefully selected, perhaps in areas where
9 future development was truly unlikely, consistent
10 with land-use plans, might have wilderness areas,
11 national monuments in the National Lands
12 Conservation System, for instance. In terms of –
13 we take a hard look at what the land-use plan is
14 for that region and what the likelihood of future
15 development there is. There's 245 million acres
16 out there. A lot – there's quite a bit under
17 development, but there's a tremendous amount that's
18 not. So the field office manager looks very
19 carefully at that.

20 As mentioned, the BLM – our process, we also
21 review if there's a NEPA impact, National
22 Environmental Policy Act. Most of the reburials
23 have been from perhaps one to three individuals, so
24 they've been quite discreet locations, as opposed
25 to a larger area, and of course, that National

1 Historic Preservation Act compliance.

2 We look at the protection issue, both legal
3 and physical. The physical protection, part of
4 that comes back to the likelihood of future impacts
5 to the site. We like to – it's not required, but
6 it is an option, to have a reburial agreement with
7 the tribe that lays out roles and responsibilities
8 and expectations for what the BLM will and will not
9 do. In a lot of cases, there have been eight of
10 them, so we've got – I don't want to – I'd like to
11 say all of them, but most of them I know that there
12 is a monitoring plan that's incorporated, so those
13 sites are added to the – every field office
14 monitors annually, cyclically, a set of cultural
15 sites, and so they're added for monitoring
16 purposes.

17 The legal protection is a little more
18 difficult, because nothing in NAGPRA addresses the
19 Freedom of Information Act or confidentiality. In
20 – the BLM had looked at the FOIA piece in the
21 Archeological Resources Protection Act. If, in
22 discussion with the SHPO and the BLM manager, the
23 reburial is considered an archeological resource
24 then we're able to apply the legal protections in
25 ARPA. We did seek an opinion from the chief – the

1 Departmental Consulting Archeologist in 2007 on
2 this very question, are reburied remains
3 archeological resources? We had a number of
4 discussions within Interior. We didn't receive a
5 definitive answer. In the meantime, as I
6 mentioned, we must move on. We're all waiting for
7 something to happen; at the same time, we have to
8 move on. And so that has been very carefully
9 decided in discussion with, in some cases, the
10 SHPO, and so it -- in some cases, the decision was
11 yes, archeological -- yes.

12 LINDALEE FARM: Thank you very much.

13 ALEXANDER BARKER: Madam Chair?

14 ROSITA WORL: Go ahead, Alex.

15 ALEXANDER BARKER: Just to clarify, make sure I
16 understand, the decision to treat them as
17 archeological resources was specifically to give
18 them shield from FOIA requests, which wouldn't have
19 been afforded otherwise. Is that correct?

20 EMILY PALUS: Yes, the location of
21 archeological resources is restricted from FOIA.

22 ROSITA WORL: Okay. We'll take one more
23 comment.

24 MERVIN WRIGHT, JR.: Can we get a copy of your
25 presentation, Ms. Palus?

1 EMILY PALUS: Yes.

2 ROSITA WORL: Thank you very much. You heard
3 earlier that we are going to be forming a
4 subcommittee. We have formed a subcommittee to
5 deal with reburial, so I think it would be very
6 helpful if you could provide us with any policies
7 or procedures, written documents that you might
8 have on the reburial issues. And if you would
9 share that with Sherry, that would be most helpful
10 to us.

11 EMILY PALUS: Of course, I will make that
12 available.

13 ROSITA WORL: And I want to thank you for your
14 presentation. I think it's very helpful for us to
15 have, you know, the Federal agencies coming and
16 giving us these very thorough reports. And I'm
17 thinking, Sherry, that we should try to schedule
18 other Federal agencies for our up-and-coming
19 meetings, so that we have this kind of — it really
20 is very informative, I think, for the Review
21 Committee. Again, I think one of the issues that
22 was raised was the repositories, and again, we had
23 asked that our staff look at that issue. I think
24 it is an issue that we're going to have to continue
25 to review. I'm not ready to form a subcommittee on

1 that, but it does appear that it's going to require
2 some – (portion of comment inaudible). – and if
3 you could give a copy of your report to Sherry that
4 would be wonderful. I think an electronic copy
5 would be great.

6 And we are –

7 SHERRY HUTT: If we take a 15-minute break,
8 Madam Chair, we can still accommodate those who are
9 scheduled to speak.

10 ROSITA WORL: Absolutely. That's – I was going
11 to give a ten-minute break. You had a very long
12 break this morning, and so if we could have a very
13 short break. Come back in ten minutes. We will
14 hear the presentations. We had said we were going
15 to take public comment, and we are going to take
16 public comment today and tomorrow. So ten-minute
17 break.

18 SHERRY HUTT: Perfect. We'll line them up.

19 **BREAK**

20 ROSITA WORL: We'll go ahead and call the
21 Review Committee meeting back into order. We will
22 call the Review Committee back into order please.
23 We are now scheduled – we are somewhat behind, but
24 we are going to hear from the Fallon Paiute-
25 Shoshone Tribe at this point in time, and I want to

1 welcome Chairman Alvin Moyle. Good to see you
2 again. And if you would go ahead for the record,
3 introduce yourself and your colleague, and we will
4 go ahead and proceed. Thank you, and welcome very
5 much. Welcome.

6 **PRESENTATION: FALLON PAIUTE-SHOSHONE TRIBE**

7 **PRESENTATION**

8 ALVIN MOYLE: Well, on behalf of the Fallon
9 Paiute-Shoshone Tribe, I would like to thank the
10 committee for being able to provide this
11 opportunity for me and my colleague Jacqueline
12 Allen. She's a council person with our council,
13 and I wanted to start introducing her to the people
14 that we've had the opportunity to talk to before in
15 regards – maybe not all of you, but some of you, in
16 regards to our request for the repatriation of the
17 Spirit Cave remains. And that still is – that's
18 still on the table with us.

19 And we brought some material for this meeting,
20 and actually after attending a meeting down on
21 Tucson, just on March 14th and 15th, I found some
22 very interesting information in reference to
23 disposition of the culturally unidentifiable human
24 remains. Excuse me, I've got somebody – shut it
25 off. In which case that – looking at one of the

1 subsections of that amended law, that it pertains
2 to from whose lands was the human remains taken
3 from, and then it makes reference to lands that
4 would be under the — as far as under a final
5 judgment under the Indian Claims Commission, and
6 I've brought documents pertaining to the Indian
7 Claims Commission, and those lands that pertain to
8 the Northern Paiute Nations, in which case they
9 would divide it into three different separate
10 nations, basically covering and going to the state
11 of Arizona, going throughout the state of Nevada
12 and into California. And that is all over there.
13 And I know it's kind of hard for you to lay out
14 maps where you're at, but in which case, I want you
15 to know that I've given it to Sherry Hutt and I
16 thank her for that.

17 And I would like to go ahead and begin, but
18 would you like to make a couple of comments?

19 JACQUELINE ALLEN: No, go ahead.

20 ALVIN MOYLE: Okay. The — I'm just kind of —
21 going to kind of roll through this for the purposes
22 of — I know you have a certain timeframe.

23 (Inaudible comments.)

24 ALVIN MOYLE: I'm not just exactly sure how
25 much material you want, but I brought material that

1 pertains to this. First of all, we notified your
2 office, or the National Park Service, that – of who
3 the representative will be for the Fallon Tribe,
4 that will be me. And the second part of that is
5 that I look at another item in some of the material
6 I'm reading is that are you a federally recognized
7 tribe, and yes, we are. I've brought material
8 that's in that package there for you to review. We
9 are listed among the many others that's federally
10 recognized.

11 This case that I'm going to – the rules and
12 regulations, which I have crafted my testimony on,
13 that I may be speaking in this case that a little
14 bit beyond what might be where we should be with
15 this. I did have the opportunity after coming back
16 from the Tucson meeting to contact or basically
17 write, first of all, to the state director of the
18 State of Nevada BLM asking for a consultation. Up
19 to that point, and I'd like to make reference to
20 this, that knowing that the law was passed in 2010,
21 it kind of makes you look at, well, why were we not
22 asked for consultation on it, and it had to be me
23 that initiated that step. So I want you to know
24 that, and I think it's very important that that's
25 known. In which case, that was done.

1 I did receive confirmation back from that
2 letter that I'd wrote her, Ms. Amy Lueders, that
3 there will be a consultation and did receive a call
4 from Mr. Tom Burke, who maybe some of you know,
5 that's in the state - Nevada BLM Office, and he
6 asked me if I could come up and meet with him on
7 last Wednesday and I did. And we talked about the
8 subject. And prior to coming to the meeting, to
9 that meeting, I had called him and he was not in
10 but I left a message, and I told him that I would
11 like to take a look at the aboriginal territories
12 of the Native Americans who were - that is the
13 Paiute Nation in Northern Nevada. And so he, from
14 that, went ahead and - I'm going to - move some of
15 those aside. I'm going to make reference to some
16 of the - I'm going to call it handouts that I
17 brought. This right here, this map, talks about
18 the Indian Claims Commission Studies of all the
19 lands of all the tribes in the United States.

20 ROSITA WORL: Could you speak into the mic?
21 And maybe you could lift it up out of there,
22 because we want to record your comments.

23 ALVIN MOYLE: Excuse me. Mr. Tom Burke, at the
24 state office in Reno, produced this map for me,
25 which is a map that shows all the Native American

1 lands that came under the Indian Claims Commission
2 Study, and within that, of course, is the state of
3 Nevada, and it goes into those three different
4 Paiute peoples (comment inaudible) lands in
5 Northern Nevada. It goes down into the Mono County
6 area up into the area Mervin Wright is from, and
7 then on up into the Oregon and Idaho areas.

8 So this is – the main subject that I felt
9 after reading the rules and regulations that had
10 been adopted by the NAGPRA Review – well, by the
11 National Park Service, where it talks about the
12 disposition of culturally unidentifiable human
13 remains, and it goes down into subsection number
14 (2) and it talks about subsection number (2)(i),
15 “From whose tribal lands, at the time of removal,
16 the human remains and associated funerary objects
17 were removed,” and then it goes down into (ii),
18 “From whose aboriginal lands the human remains and
19 associated funerary objects were removed,” and it
20 again goes back to the, “Aboriginal occupation may
21 be recognized by a final judgment of the Indian
22 Claims Commission...” With that being what I
23 looked at and looked at, up until the time I became
24 satisfied with it, I needed to find the document
25 that once again had pertained to that Indian Claims

1 final judgment. That subject is in the package
2 that I gave you, and it's - you have, in the
3 package that I gave you, this right now of the
4 Paiute Nation's lands that were under the Indian
5 Claims Commission, and it shows the area that I'm
6 from, the area that the (comment inaudible) people
7 are in, the area that the people up in Oregon and
8 the northern part of the state of Nevada are in.

9 And with that, what I would like to do is
10 begin with my statement to you today.
11 Introduction, regarding the Spirit Cave Man in
12 C.F.R. Title 43 Part 10 Subsection 10.11,
13 Disposition of Culturally Unidentifiable Human
14 Remains, I, Alvin Moyle, Chairman of the Fallon
15 Paiute-Shoshone Tribe, with me is Council Member
16 Jacqueline Allen. I would like to respectfully
17 thank the NAGPRA Review Committee for this
18 opportunity to present our concerns for the Spirit
19 Cave ancestor's repatriation. That being said, I
20 would like to begin with our presentation.

21 The date was August 11, 1940. The Nevada
22 State Parks Commission had hired archeologists
23 Sydney M. and Georgia Wheeler to investigate a
24 score of caves located six miles south of the
25 Fallon Paiute-Shoshone Reservation in Churchill

1 County, Fallon, Nevada. On that day, the Wheelers
2 decided to check a cave that they had seen many
3 times, but had not explored. That cave has become
4 known as the Spirit Cave in the scientific society
5 and to others, as well. As a result of their
6 exploration, they discovered two burials which
7 would date back to the early Holocene period. One
8 of the burials revealed a person that was mummified
9 and very old. This person would become known to
10 the society we live in as the Spirit Cave Man. In
11 reference to how old this person might be would not
12 be known until 1994, when two dating projects were
13 undertaken by others who study pre-history. As a
14 result of the dating study, the two burials that
15 were unearthed by the husband and wife team found
16 the remains to be over 9,000 years old.

17 With reference to papers written by Mr. Donald
18 R. Tuohy and Amy Dansie, regarding Holocene burial
19 localities, this was not the first time an
20 aboriginal burial in the Great Basin dated in
21 excess of 9,000 years. A study conducted by L. S.
22 Cressman's radiocarbon-dated sagebrush fiber
23 sandals from Ft. Rock Cave in the northern Great
24 Basin in Oregon dated just over 9,000 years at
25 9,052 plus 350. Quoting from the Donald R. Tuohy

1 and Amy Dansie report they say, "We have a mummy
2 with hair on his head. At about 9,415 years old,
3 the mummy turned out to be the oldest in North
4 America. He was excavated in the Grimes Point
5 foothills near Fallon, Nevada, in 1940 by Sydney M.
6 and Georgia Wheeler."

7 Quoting from the Amy Dansie report of the
8 Early Holocene Burials in Nevada they say,
9 "Although, we have known for years that human
10 occupation started in the Great Basin before 11,000
11 years ago and possibly even 12,000 years ago (Bryan
12 1974), human bones known to be older than 8,000
13 years have been found."

14 In reference to other studies, the findings of
15 the Spirit Cave included artifacts, funerary
16 objects and other items known as textiles were
17 studied. The study was conducted by Catherine
18 Fowler and Eugene Hattori, of the Nevada State
19 Museum. At the conclusion of their study, I am to
20 the understanding that they have determined the
21 textiles to be Vietnamese. At the time of this
22 writing I have not had the opportunity to review
23 their study, but I do have a question: Was their
24 determination based on a comparison of a 9,415 plus
25 25 years textiles in Vietnam?

1 As I continue to review this specific case, I
2 have found that 18 different scientists have
3 conducted a study or developed an analysis of the
4 Spirit Cave ancestor, the artifacts and the
5 funerary objects also taken to the Nevada State
6 Museum, for their stockpile of collections.

7 In addition to the 18 scientists' papers, I
8 find in the Nevada Historical Society's Spring of
9 1997 Quarterly Report that other scientists' work
10 has been used to further reference the Spirit Cave
11 ancestor and the funerary objects unearthed on
12 August 11, 1940.

13 I also find in the agenda of the meeting that
14 pertained to the meeting in Tucson, a certain or
15 specific item that I feel that needed to be in this
16 report, from the Code of Federal Regulations; with
17 the Title 43 Public Lands Department of Interior;
18 under Subtitle A, The Office of the Secretary of
19 the Interior, Part 10, Native American Graves
20 Protection and Repatriation Regulations; number (5)
21 Subpart C, Human Remains, Funerary Objects, Sacred
22 Objects, or Objects of Cultural Patrimony in
23 Museums and Federal Collections; number (6) 43
24 C.F.R. Subsection 10.11, which may become – which
25 became effective May 14, 2010. Of particular

1 interest to me in attending that meeting was
2 Subsection 10, Disposition of Culturally
3 Unidentifiable Human Remains under 43 C.F.R.
4 Subsection 10.11.

5 With reference to Subsection 10.11,
6 Disposition of Culturally Unidentifiable Human
7 Remains in Subsection (2)(i) and (2)(ii), the –
8 I'll begin first of all with subsection (a)
9 Generally – General, that is. This section
10 implements Section 8(c)(5) of the Act and applies
11 to human remains previously determined to be Native
12 American under Subsection 10.9, but for which no
13 lineal descendant or culturally affiliated Indian
14 tribe or Native Hawaiian organization has been
15 identified.

16 Under (b), Consultation. The museum or
17 Federal agency official must initiate consultation.
18 I'd like to make a comment on that. I had not been
19 notified. I had to notify that Federal official,
20 in which case it was the BLM officer in the state
21 of Nevada about consultation, in which case that
22 was done. And then once again, I guess, in regard
23 to the disposition of culturally unidentifiable
24 human remains and associated funerary objects:
25 (b)(i), under that subsection, Within 90 days of

1 receiving a request from an Indian tribe or Native
2 Hawaiian organization to transfer control of
3 culturally unidentifiable human remains and
4 associated funerary objects.

5 What I would like to do is once again touch
6 base with you on the Subsection (2)(i), From whose
7 tribal lands, at the time of the removal, the human
8 remains and associated funerary objects were
9 removed; and Subsection (2)(ii), From whose
10 aboriginal lands the human remains and associated
11 funerary objects were removed. Aboriginal
12 occupation may be recognized by a final judgment of
13 the Indian Claims Commission, or the United States
14 Court of Claims, or a treaty, an Act of Congress,
15 or an Executive Order.

16 In reference to the aboriginal lands as
17 mentioned above, Subsection (2)(i), (ii), Ms. Allen
18 and I have brought maps for this committee's
19 review, which will certify the aboriginal lands of
20 the Fallon Paiute-Shoshone Tribe, also the
21 geographic area in the State of Nevada. In which
22 case, I gave those to Ms. Hutt, and you have a
23 complete set and we went ahead and kept one, but it
24 — all of the documents pertain to that area of
25 Fallon, Nevada, that area of Nevada. And as far as

1 the — call it the Spirit Cave remains being from
2 the aboriginal territories of the Fallon Paiute-
3 Shoshone Tribe, it's within six miles, and there's
4 a map that identifies that for you there.

5 And I just want to expound on that, but in
6 closing, as Chairman of the Fallon Paiute-Shoshone
7 Tribe, I would like to request the support of this
8 NAGPRA Review Committee regarding the repatriation
9 of the Spirit Cave ancestor. It has been since
10 1994 that we began and made it well known of our
11 concerns with the human remains that should be
12 returned to the lands of which he was buried.

13 I will again state to the Federal officials
14 who state that they have a right to the possession
15 of our ancestor; he does not belong on a shelf in a
16 museum, he does not need to undergo any further
17 study, he does not need to continue being a
18 specimen, he has walked through his circle in life,
19 and he needs to come home. That concludes my
20 testimony.

21 ROSITA WORL: Do you have further comment?

22 ALVIN MOYLE: Do you have any questions?

23 JACQUELINE ALLEN: No, I just — I agree with
24 Chairman Moyle; he needs to come home. He was well
25 within our aboriginal territories, and that needs

1 to be recognized and acknowledged.

2 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

3 ROSITA WORL: Okay. Thank you. For the Review
4 Committee, let's just go back and kind of review
5 the history. In 1994, the – this was brought to us
6 as a dispute. The Review Committee did issue
7 findings. And maybe our counsel or someone could
8 refresh or tell us what we did at that time with –
9 insofar as human remains. I cannot recall if there
10 were – if that claim also had the funerary objects,
11 but if you could just give us a report on the
12 Review Committee's findings and then any kind of
13 subsequent action and then tell us where we are
14 today insofar as the decision-making process.

15 CARLA MATTIX: This dispute was brought before
16 the Review Committee in 2001.

17 ROSITA WORL: Can you all hear it there in the
18 back? Yes, I don't think so.

19 CARLA MATTIX: Is this on?

20 ROSITA WORL: I don't know.

21 CARLA MATTIX: The Review Committee considered
22 this dispute between the –

23 ROSITA WORL: I don't think that's working.

24 CARLA MATTIX: Is this any better?

25 ROSITA WORL: Yes, much better.

1 CARLA MATTIX: The Review Committee considered
2 this dispute between the Fallon Paiute-Shoshone
3 Tribe and the Bureau of Land Management in November
4 of 2001, and the findings were published in the
5 *Federal Register*, and they're up there. They're a
6 little bit hard to read so I'll just summarize
7 those, and basically six of the – six out of the
8 seven Review Committee members found that the
9 preponderance of the evidence indicated a
10 relationship of shared group identity, which can be
11 reasonably traced between the present-day Fallon
12 Paiute-Shoshone Tribe and the human remains and
13 associated funerary objects from Spirit Cave in
14 Nevada. So that was essentially a finding that
15 there was cultural affiliation between the tribe
16 and the human remains and associated funerary
17 objects.

18 ROSITA WORL: And then subsequent action?

19 CARLA MATTIX: I believe, and I haven't
20 reviewed this case in a while, but my recollection
21 is that the tribe brought this case to District
22 Court after this dispute occurred. And I haven't
23 re-read the court's opinion in some time. And
24 Emily may actually have more specific information
25 about this, but the case did go to court and the

1 court did remand the decision back to the Bureau of
2 Land Management for further consideration. And my
3 understanding is since that time, BLM has been
4 reviewing that decision, and it's still under
5 review today.

6 SHERRY HUTT: Would you like to be allowed to
7 respond?

8 ROSITA WORL: Let's invite - (portion of
9 comment inaudible).

10 EMILY PALUS: I just -

11 ROSITA WORL: And could you give us a timeframe
12 again?

13 EMILY PALUS: I just - is this - I can't tell
14 if it's on.

15 ROSITA WORL: Yes, go ahead. You're - we can
16 hear you.

17 EMILY PALUS: I just wanted to share that in
18 response to the committee's request for an update
19 last fall, the State Director did send a letter,
20 which I have a copy in my hand, which is what I was
21 handing to the representatives over here, to the
22 Review Committee just summarizing the history and
23 where we are today and the status update. Since
24 that was for the last meeting, I don't imagine you
25 have it in your packets today. I'd be happy to

1 read from it. This is from the State Director and
2 I'm not — and I don't want to —

3 ROSITA WORL: If you could just summarize it
4 for us where we are.

5 EMILY PALUS: — and I don't want to speak for
6 where the BLM Nevada should be speaking, but in
7 their letter to the Review Committee last fall, it
8 shared, Following the Review Committee's
9 recommendation regarding disposition, there was
10 additional discussion between the tribe and the BLM
11 Nevada State Office, and the issue was elevated to
12 the BLM Washington Office and the BLM Director, in
13 2003. And in February 2004, I'm reading from the
14 letter, the BLM Director sent a letter to the tribe
15 stating that the tribe's concerns had been
16 addressed and there were no further course of
17 action to be taken at that time. In 2004, the
18 tribe initiated legal action against the BLM in the
19 case of Fallon Paiute-Shoshone Tribe versus the
20 United States Bureau of Land Management. That's
21 the court case that both the Chairman and I have
22 referenced in our presentations.

23 The court ruled — let's see, the tribe alleged
24 and the court ruled that the BLM's determination
25 was arbitrary and capricious under the

1 Administrative Procedures Act because the
2 scientific evidence the tribe provided to the BLM
3 prior to its determination was not properly
4 considered in the BLM's initial determination, that
5 the BLM did not consider the findings of the – of
6 the Review Committee when its final determination
7 was contested before the Review Committee, and that
8 the BLM failed to consider the scientific evidence
9 that was first provided to the Review Committee
10 after the BLM's final determination. In the 2006 –
11 in its 2006 order, the court determined that the
12 BLM made no error in the procedures employed in
13 making its initial determination of nonaffiliation.
14 Rather error rose when the BLM dismissed the
15 evidence provided by the tribe in support of its
16 repatriation request, including evidence which
17 arose through the Review Committee proceedings
18 without fully explaining the reasons behind the
19 BLM's actions.

20 This ruling came out in the fall of 2006, and
21 as I shared in my presentation, following that
22 ruling, the BLM immediately responded to the
23 court's direction, continued consultation and
24 communication with the tribe. The BLM has taken
25 actions to review all evidence before it. As I

1 mentioned, I talked about this additional review,
2 hiring three independent consultants, and the BLM
3 is still reviewing that with the Solicitor's
4 guidance, and as mentioned, has also been reviewing
5 the applicability of 43 C.F.R. 10.11, Disposition
6 of Culturally Unidentifiable Human Remains, and
7 seeking the Solicitor's guidance on that.

8 So that's - I don't mean to interject into the
9 Chairman's time, but that is just reading from the
10 letter shared with me.

11 ROSITA WORL: So at this time, BLM in DC is
12 considering this and they - and do you have any
13 timeframe as to when we might expect -

14 EMILY PALUS: This is the BLM - the BLM Nevada
15 State Director has - is the authority to BLM
16 Nevada, and as the Chairman shared, BLM Nevada and
17 the tribe have had conversations as recently as the
18 last few weeks. It is under Solicitor's review.
19 It has not seen in the Washington office; it has
20 been under the Solicitor's review for some time.
21 And in anticipation of that very question of when
22 we would expect - it's in the Solicitor's Office.

23 ROSITA WORL: Okay. So right now I'm trying to
24 figure out what the Review Committee can do. What
25 are our possible options? We have had a request

1 from the tribe, and I would just like clarification
2 as to what can we do. I mean, I'm sure that the
3 Review Committee wants to be responsive in this
4 effort, but I don't know if we have any parameters.

5 SHERRY HUTT: Madam Chairman, due respect to
6 the Chairman, in asking to put this on the agenda
7 as a presentation and information item, it was not
8 indicated as an action item. So we really don't
9 have that to the point where we've given you
10 materials, and we don't have a dispute because we
11 aren't at that stage either. So I don't believe we
12 have an action item before you. I believe what we
13 have at this moment is an information piece.

14 ROSITA WORL: Okay. But, let's see - so there
15 are two things we - see what we could do. We could
16 ask that - I mean, one possibility is to - that we
17 - well, we could ask for - I think in our dispute
18 procedures we also talk about some negotiations
19 where the Review Committee is involved with the DFO
20 and the Chair, with the parties. And perhaps, you
21 know, that's one possible avenue. Second is a
22 formal dispute. Third, I'm wondering is it
23 possible - I don't know if this is new information
24 that's being brought, insofar as the delineation of
25 the aboriginal lands. I don't know that, and of

1 course we couldn't act on that because we don't
2 have all of that information. The Review Committee
3 does not have all of that background information.
4 So I don't know if that would constitute under our
5 procedures that we could revisit, you know, items.

6 SHERRY HUTT: One of the — under the current
7 dispute procedures and the timelines that we've
8 been using, if there was a breakdown in
9 communication between the parties and that came to
10 us, the first thing that we do is bring the parties
11 together, even the timeline that we have begun to
12 publish, you know, eight months in advance of a
13 meeting and show the times when you can give notice
14 that you're bringing something to the Review
15 Committee is really for the purpose of prompting
16 preparation and the ability to discuss.

17 Madam Chair, without overstepping, and counsel
18 will tell me if I do, but I don't believe we're at
19 that point. I think we're premature to consider
20 that we have a dispute, if the parties are talking.
21 We might be — you might be cognizant of this issue
22 is something that isn't resolved and either party
23 brings it to us for the November meeting in
24 Washington, we already have the dates on the
25 website of by when to notify us of a dispute or a

1 request for a determinations of fact finding, so
2 those are already posted. Those dates are open.
3 They're available to the parties, but in terms of
4 an action item, it would probably be premature at
5 this time.

6 ROSITA WORL: At this meeting?

7 SHERRY HUTT: At this meeting, yes.

8 ROSITA WORL: All right. Okay. It's - I'm so
9 sorry, but you know, we do have - for the
10 protection of everyone, we do have rules that we
11 have to follow, and at this point in time it does
12 not appear, you know, that we could act - have any
13 kind of action at the committee, because all of the
14 committee members have not been privy to all of the
15 information that has been presented since the
16 findings and in the court case, and then I guess we
17 would have to review if there had been new evidence
18 involved.

19 So if I could recommend if we could begin a
20 discussion with the tribe and with our DFO, and
21 then decide what we want to do at the next meeting.
22 I want - we want to be responsive to you. We'd
23 like to try to figure out how to be responsive to
24 you. And I understand that waiting, you know since
25 1994 or 2004 when - well, we had the court case in

1 2004, you've been waiting a long time, and we can
2 understand that. And we would like to be able to
3 help to move this along, and –

4 SHERRY HUTT: Madam Chair, what we've put up on
5 the screen are the dates for the November 28-29
6 Review Committee meeting. If there are requests to
7 consider a dispute by July 5 or requests for
8 findings of fact by August 10.

9 ROSITA WORL: Okay. So with that in mind, I'm
10 going to open it up for questions in just a moment,
11 but I just want to try to move the process along to
12 try to figure out what we can do, how is it that we
13 could help you. So this is one avenue. But I want
14 to now – I know that our committee members are
15 anxious to offer their opinions as well. So –

16 ALVIN MOYLE: Madam Chair, could I make a
17 couple of comments in reference to your comments
18 and her comments?

19 ROSITA WORL: Sure.

20 ALVIN MOYLE: The – when I, you know, received
21 information about this meeting being held here, in
22 which case I want to thank Mr. Mervin Wright for
23 that, I did know according to regular rules and
24 regulations about being able to participate in a
25 Review Committee meeting, that it's way beyond the

1 time limit that I finally notified the office or
2 Ms. Hutt about attending the meeting. I knew that
3 I wasn't going to be able to come here and make a
4 full blown - you know, support for the request, but
5 in which case that gets back to this subject,
6 somehow or another, did not come across my desk.

7 I'm a tribal chairman and work on a couple of
8 other committees, and we did hand this over to a
9 person that was working on it and the person was
10 let go. And then the person in this case did not
11 present to any of the council members what the
12 situation was. So we're in the dark, and that's
13 the reason why I came here, to start getting up to
14 date or, you know, to where we're at and to where I
15 need to go with this. I appreciate the time that
16 you've given me today, or the committee, and I
17 appreciate all the rest of the Federal officials
18 that are here today to allow this.

19 And what I want to do is begin in the
20 discussions. I did receive a phone call from
21 Mr. Tom Burke at the Reno office. He did say,
22 well, we would like to go ahead and meet with you.
23 This was about three weeks after I sent a letter
24 in. And of course, I know their schedule has got
25 to be busy to, but in which case I did go up and it

1 was just last week, on Wednesday. And he was very,
2 I would say, as far as looking at this issue, to me
3 he was a professional. We looked at it, you know,
4 a lot of different ways. In which case, he's the
5 one that gave me this map that talks about all the
6 Claims Commission territories of the United States.
7 And I thought, well, this is quite remarkable.
8 What I was going there for, and they had it there.
9 He brought it out right as soon as I got there.

10 In which case, that I look forward to
11 continuing on with this issue. It may not be,
12 let's call it, in the area of a dispute, but it may
13 be in the area of, let's call it, consultation in
14 depth, because where we're at, we have, you know,
15 put this, basically, the human remains of the
16 ancestors on a shelf. We want to do something
17 about it. Thank you very much.

18 ROSITA WORL: Okay. Thank you. I'll go ahead
19 and recognize — all right. Okay. So where we are
20 now is you'll begin discussion, going to start
21 consultation or a discussion with BLM. And if you
22 would like to consider coming back to us in
23 November, if you would begin discussions with the
24 DFO. And we — you know, we really want to wish you
25 well, and understand, you know, your complete

1 frustration, you know, over the length of time that
2 has lapsed on this.

3 ALVIN MOYLE: Thank you very much.

4 ROSITA WORL: Okay. Mervin?

5 MERVIN WRIGHT, JR.: You know, this particular
6 issue or this case is exactly and precisely, you
7 know, the example of what we, as tribes, face
8 across the country, the delay, the delay, the
9 delay. And I don't think you're going to meet the
10 deadlines to, you know, have this issue brought
11 back here for a finding of fact. The theory that's
12 been promoted by the BLM in Nevada, you know, would
13 basically be, you know, reversed, if they were to
14 repatriate these remains under the terms of what
15 the original findings of this committee was. So I
16 don't think -- I don't think you're going to get
17 satisfaction, but if you do and if somehow BLM
18 concedes and repatriates these remains, I will be
19 the first to stand corrected.

20 ROSITA WORL: Any other comments? Eric.

21 LINDALEE FARM: Madam Chair?

22 ROSITA WORL: I will recognize Eric and then
23 Cissy.

24 ERIC HEMENWAY: I'd like to say thank you for
25 your presentation, and I want to reiterate the

1 comments made by Rosita here about reopening
2 discussions, because there has been a major
3 development since your court case and your dispute
4 that these new regulations have been posted and
5 tribes are acting under these new regulations of
6 10.11, and so this might be an avenue that you
7 might consider in your discussions with BLM and
8 with the DFO on reaching a conclusion that's
9 successful and that everybody's in agreement with.
10 And just from the information you've provided, you
11 know, this is exactly what the information that you
12 would need in such a request under 10.11. So it's
13 just something to think about. You brought this up
14 in your presentation, so just some food for
15 thought.

16 ALVIN MOYLE: Right. Thank you.

17 ROSITA WORL: Cissy.

18 LINDALEE FARM: Thank you, Madam Chair. I
19 understand the concerns underlying that, but I
20 think one of the Review Committee's concerns, at
21 least my concern, is whether we would have
22 jurisdiction to be looking at this issue again,
23 depending upon what the scope of the remand was
24 from the district court. So I would ask counsel to
25 take a look at that. If the decision was to bring

1 this back before us to make sure that we actually
2 had the jurisdiction to look at this and to be able
3 to assist, because it would be very unfortunate if
4 you came before us and we came to the conclusion
5 that because of whatever the scope of the remand
6 was and the direction from the district court that
7 we were unable to facilitate. And I don't know
8 what it was, so I would just ask that it be looked
9 at very carefully so that if it does come before us
10 that we really can assist and so that there is not
11 further frustration, and that's just sort of a
12 precursor to make sure that we can move forward.

13 Thank you.

14 ALVIN MOYLE: Thank you.

15 ROSITA WORL: Any further comments or
16 questions?

17 Well, thank you very much for coming here. We
18 are hopeful that you can begin discussions, further
19 discussions with BLM. We're hopeful that the new
20 regulations will be of assistance to you. We hope
21 we don't have to see you in November. We hope that
22 it could be resolved prior to that time, but thank
23 you very much for being here.

24 ALVIN MOYLE: You know I feel — I feel strong
25 on that, that one, I've had the opportunity to once

1 again come before you. I've done this twice now,
2 on two different other occasions, but in my mind
3 that there is a right and wrong to a lot of things
4 and (comment inaudible) has probably heard from
5 many tribes across the nation that the human
6 remains belong where they were put years ago,
7 regardless of how many thousands of years ago or
8 how many hundreds of years ago it's been. But I
9 appreciate the fact that the Federal Government has
10 adopted, you know, a committee such as this right
11 here, and I just want you to know that I look
12 forward to seeing you again, even if it's not
13 talking about our ancient person. Thank you.

14 ROSITA WORL: Thank you, Mr. Chair.

15 SHERRY HUTT: All right. Madam Chair, the
16 individuals are ready for the next presentation.

17 ROSITA WORL: All right. So we'll call on UC
18 Berkeley.

19 SHERRY HUTT: Yes. (Portion of comment
20 inaudible) with her will be Richard Buxbaum, who is
21 a law professor at Boldt Hall at Berkeley, and
22 Jordan Jacobs, who is their new addition as their
23 NAGPRA specialist.

24 **PRESENTATION: NAGPRA UPDATE, UC BERKELEY**

25 **PRESENTATION**

1 MARI LYN SALVADOR: Thank you. Thank you very
2 much for offering this opportunity. I want to
3 mention that Richard Buxbaum is also the Chair of
4 the Berkeley NAGPRA Advisory Committee, and he
5 serves on the UC system-wide NAGPRA Advisory
6 Committee as well, and I'll say a few words about
7 Jordan in a few minutes. I welcome this
8 opportunity to update the Review Committee
9 regarding repatriation activities at UC Berkeley.
10 Now, I went off my line here.

11 The Museum of Anthropology, now called the
12 Hearst Museum, was founded in 1901. It's major
13 patron, Phoebe Atherton Hearst, supported
14 systematic collecting efforts by both archeologists
15 and ethnographers throughout the world, actually,
16 to provide the University of California with
17 materials for a museum to support a Department of
18 Anthropology. Phoebe Hearst hoped that the
19 anthropology program at UC and in the California
20 system, the first anthropology department a museum
21 established west of the Mississippi, would become a
22 center for the discipline. We're still working on
23 this, but we're trying. Because of the vast and
24 diverse collections of the Hearst, that the Hearst
25 has assembled over its 111-year history, an

1 estimated 3.8 million objects of all things, NAGPRA
2 considerations form a central part of our vision
3 and are a primary priority for us at this time.

4 The Hearst Museum has a strong commitment to
5 continue NAGPRA compliance. The University,
6 Berkeley, supports this effort, and in fact,
7 starting in 2010, has provided funding for four
8 additional NAGPRA hires. This is to provide a
9 team, rather than just one person trying to do all
10 of this work. So the team now has five full-time
11 staff on that team, including Jordan. I want to
12 say just a couple words about Jordan. He holds a
13 BA from Stamford and a master's degree from
14 Cambridge University, with his focus at both
15 universities was on NAGPRA issues, museum ethics,
16 cultural heritage preservation, and the suppression
17 of trade of illicit antiquities. He comes to the
18 Hearst Museum after five and a half years as
19 repatriation manager at the American Museum of
20 Natural History in New York. He is making a big
21 step towards helping us professionalize the team
22 and strengthen it.

23 I'm pleased also to report that in 2011, with
24 leadership from Chancellor Birgeneau at UC
25 Berkeley, the UC system has provided funding for a

1 project to move staff, students and all collections
2 out of the Hearst Gym basement. This is an
3 enormous endeavor and a very essential and
4 important thing to do – to be doing. Part of this
5 project involves providing a safe, respectful
6 environment in Kroeber Hall, very close to where
7 the remains are now, for human remains, a space for
8 consultation, for ceremony, along with maps,
9 documents, archives, and everything that's needed
10 to be – to support consultations and claims.

11 Now, getting to the inventory reformatting
12 project, in 1999 and 2000, UC Berkeley submitted
13 its NAGPRA inventories in full compliance with
14 NAGPRA. Indeed in an effort for transparency,
15 these documents contained not only – contained not
16 only the list of information required by the law,
17 including a log of all consultation efforts, and
18 there were many, many consultations at that point,
19 but all of the museum's research that went into
20 them. At least one of these documents included
21 1,800 pages. Sorry about that, Sherry. I know
22 that's turned into a big problem. Unfortunately,
23 there were problems with these documents. Most
24 notably and regrettably, they were incorrectly
25 titled "Notices of Inventory Completion," rather

1 than "Inventories," even if their content was
2 clearly that of an inventory and not a notice.
3 Sorry about that. It's — I really regret that. I
4 apologize for that.

5 Additionally, the effort for transparency has
6 led to problems. Namely, these documents were not
7 easily transferrable to the NAGPRA Program's
8 inventory database, and as a result, in the 12
9 years plus since Hearst submitted its inventories,
10 National NAGPRA has transferred some — transferred
11 some but not all of the original inventories into
12 their database. Additionally, errors in this
13 transcription has caused significant confusion.
14 Minimum numbers of individuals, funerary objects,
15 the collector information is sometimes incorrect or
16 does not reflect the information contained in the
17 Hearst documents. This can be a problem during
18 consultation as tribes often use the database to
19 structure their visit.

20 In an effort to address this situation, the
21 Hearst Museum has begun an effort to reformat and
22 resubmit all of its 128 original CUI inventories.
23 We have already submitted three groupings of
24 inventories to National NAGPRA — National NAGPRA —
25 that's hard to say — National NAGPRA Program.

1 While the original inventories were complete and
2 full consultation with tribes and through thorough
3 research all along – along all lines of evidence,
4 the Hearst staff, the Director included, view this
5 as an opportunity to review the determinations to
6 see if more affiliations can be made and to correct
7 any errors.

8 The Hearst – while the Hearst will prioritize
9 the resolution of current and future NAGPRA claims,
10 it will continue the reformatting of its original –
11 reformatting and resubmitting its original
12 inventories with the goal of completing them by the
13 end of 2014, depending on the volume of claims. I
14 would be – I thank you again for including us, and
15 we would be happy to take questions.

16 ROSITA WORL: Do we have further comment for
17 other presenters?

18 UNIDENTIFIED PRESENTER: We'll wait for
19 questions.

20 ROSITA WORL: Great. Thank you.

21 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

22 ROSITA WORL: Do we have any comments or
23 questions from the Review Committee? Sonya.

24 SONYA ATALAY: Well, first I want to thank all
25 of you for not just coming forward today and giving

1 us an update, but I know that others from UC
2 Berkeley have come forward in previous meetings,
3 and we really appreciate hearing from you. It's
4 particularly heartening to hear the progress that's
5 being made. That's wonderful. I know at our last
6 meeting in Reno, you were also, I believe, spending
7 that time working with tribes. And so it's
8 wonderful to see the progress and thank you for
9 coming forward to report it. Also it's great to
10 see that other people are being hired to do the
11 work because I know it is a lot of work, so thank
12 you for that.

13 My question is since we've heard so much about
14 repositories today, I do want to ask you a question
15 about that; if, in addition to the remains that you
16 have, if you're acting as a repository for Federal
17 agencies, and if so, how many remains are in UC
18 Berkeley's possession with regards to acting as
19 repositories for Federal agencies and if those
20 remains are in the CUI database or in inventories
21 or notices.

22 ROSITA WORL: If you could just identify
23 yourself for the record.

24 JORDAN JACOBS: Yes, sure. I'm Jordan Jacobs,
25 and I've now been at the Hearst for about two and a

1 half months. So actually that's one of the issues
2 we're trying to untangle now when we're looking at
3 our old inventories. Another issue with those
4 documents is that we not only reported our own
5 collections, but we also did submit inventories for
6 those Federal collections as well, which has led to
7 some confusion.

8 So right now we are doing a concentrated
9 effort to see which of our collections are Federal
10 collections, and we've begun to work with the
11 agencies involved. So we have a total of around
12 MNI of about 9,200 in the collection, about 500 or
13 so, we think, at this point, are actually Federal
14 collections, if that gives you some idea.

15 ROSITA WORL: Thank you. Do you have any
16 follow up?

17 SONYA ATALAY: I just wonder if you have set
18 forward, perhaps for your committee, a timeline for
19 completing the work, if you have some sense of
20 that. And any barriers that you're - that you're
21 encountering, we'd like to hear those as well.

22 MARI LYN SALVADOR: With the Federal - with the
23 agencies?

24 SONYA ATALAY: With Federal collections or with
25 the collections that you have, any of those.

1 JORDAN JACOBS: Sort of – it's actually maybe
2 the same answer for both questions, because we're
3 addressing this Federal agency issue as we go
4 through our old inventories. I mean, we think and
5 we hope we can complete them within the next two
6 years, but again that's going to depend on the
7 volume of claims that come in between now and then,
8 and we're also dealing with several ongoing claims
9 at the moment.

10 ROSITA WORL: Okay. Thank you. Any further
11 questions or comments from the Review Committee?

12 If not, thank you very much for your
13 presentation.

14 MARI LYN SALVADOR: Can I say one more thing
15 please?

16 ROSITA WORL: Yes, go ahead.

17 MARI LYN SALVADOR: I want to make it – make it
18 clear that some people may have read online that we
19 are ostensibly closing the museum for two years to
20 do this – to get this work done as quickly as
21 possible. And along with everything that we're
22 doing with managing movement of objects, and of
23 course to clear the space in Kroeber Hall, we need
24 to move everything out from there, so we're going
25 to move 1.7 million objects in the next two years.

1 The – we were hiring – with the funding, we're
2 hiring, I think, 11 additional temporary people
3 just to handle all of this.

4 But the important thing for this group is to
5 know that it will – it has no impact on
6 consultation. It has no impact on progress with
7 NAGPRA. This is a separate team. It will – that
8 work will continue and my – our feeling is that
9 it's very important for us to provide a safe and
10 respectful environment for the human remains while
11 they're – while they're under our care, and we
12 don't have any thoughts about how long they'll be
13 there. So we're not intending this to give the
14 impression that we think that that's a permanent
15 situation, but they need to be taken care of
16 properly.

17 ROSITA WORL: Thank you again, and good luck in
18 the new work.

19 MARI LYN SALVADOR: Thank you.

20 ROSITA WORL: All right. I think we are, Madam
21 DFO, ready for public comment.

22 SHERRY HUTT: Yes, we have a few. If I might
23 call forward Bradley Hight and Bridget Ambler.

24 **PUBLIC COMMENT**

25 **BRADLEY HIGHT/ALDEN NARANJO**

1 BRADLEY HIGHT: Good afternoon, again. My name
2 is Bradley Hight. I'm Vice-Chairman Ute Mountain
3 Ute Tribe, and with me I also have Mr. Alden
4 Naranjo from the Southern Ute Tribe and Bridget
5 Ambler from History Colorado, also Sheila Goff from
6 History Colorado.

7 Madam Chairman and members of the Review
8 Committee, I would like to clarify for the record
9 comments made to you earlier regarding the Colorado
10 Lands Repatriation Working Group. That is that we
11 are asking the Review Committee to consider
12 reburial options for all repatriated and
13 disposition Native American human remains, both
14 culturally unidentifiable and culturally
15 affiliated, not organization from Federal – or not
16 originating from Federal or tribal lands and not
17 repatriated from Federal agencies.

18 ROSITA WORL: Are others in your – going to
19 make statements?

20 ALDEN NARANJO: Cord is not long enough. Good
21 afternoon, members of the Review Committee and
22 ladies and gentlemen of the – those that are
23 assembled here. My name is Alden Naranjo, and I'm
24 the NAGPRA Coordinator for the Southern Ute Tribe
25 Cultural Preservation. Our position on this is

1 that since 1990, since NAGPRA was passed, it has
2 been a long, uphill, seems to me a battle for the
3 tribes, the original people of this country here.
4 And I just wanted to say thank you for taking care
5 of our land here, because, you know, we welcome you
6 to our Indian land that's still Indian land. And
7 our burials and our people that have been placed in
8 this Mother Earth. We walk upon the bones of our
9 people, and we still do that.

10 And we have such a difficult time in trying to
11 identify those ancestors with the Federal
12 Government and all the departments that take care
13 of some of these places. What we're asking for is
14 just part of our ancestral lands to repatriate and
15 also to reinter our ancestral remains so that they
16 can rest in peace, rather than have them set and,
17 you know, some of them have been on the shelves of
18 the repositories for over, you know, over 50 years
19 or more.

20 And what we're asking is that we continue to,
21 as Native American people or aboriginal people of
22 this country, that we try to have them repatriated
23 back to our individual groups of people, so that we
24 can reinter them. What we're trying to do in
25 Colorado is try to find places that we can reinter

1 those ancestral remains. So we come before the
2 Review Committee to ask for your support again, and
3 any other entity that may want to give us some kind
4 of support we would welcome that. So in that way I
5 thank you very much.

6 ROSITA WORL: Thank you very much.

7 Does the Review Committee have any comments or
8 questions of our guests?

9 Thank you very much, and thank you again for
10 emphasizing this issue. We know that it's a
11 critical issue for Native Americans, and the Review
12 Committee is hopeful that through our subcommittee
13 we're going to begin focused energies and attention
14 on this issue.

15 Did you have any final comment?

16 BRADLEY HIGHT: Yes, ma'am. Just please accept
17 our heartfelt thanks for your comments and time
18 given us for our presentation this morning. I also
19 would like to say that this fall or this coming
20 spring, we're going to have a meeting in Colorado,
21 in Denver, Colorado, and we would like to invite
22 the committee to come up and join us, and we will
23 be sending out the time and dates. Okay?

24 ROSITA WORL: Okay. Thank you very much for
25 that invitation.

1 BRADLEY HIGHT: Thank you.

2 SHERRY HUTT: Madam Chair, we have two more
3 brief presentations, if we would call Chuck Symthe
4 forward.

5 **CHUCK SMYTHE**

6 CHUCK SMYTHE: Good afternoon, Madam Chair and
7 other members of the committee. My name is Chuck
8 Smythe. I'm the Ethnography Program Manager in the
9 Northeast Region of the National Park Service, and
10 in that capacity, I also serve as the NAGPRA
11 Coordinator for that region. And I'd just like to
12 follow the discussion this morning about the
13 difficulties tribes are facing findings lands for
14 reburials with some information from my experience
15 in the Northeast Region that might be helpful. And
16 it relates to the Delaware Tribe.

17 The Delaware people lived in areas of Eastern
18 Pennsylvania, all of New Jersey, Southeastern New
19 York and Western Long Island, but they were exiled
20 by 1750 from their homeland and ended up in
21 Oklahoma and Wisconsin. There are three federally
22 recognized Delaware and Munsee Tribes today, and
23 we're been working with them continuously for the
24 last ten years, had two reburials in the region and
25 numerous Section 106 consultations.

1 And primarily through the leadership of the
2 Stockbridge-Munsee Community, which is one of the
3 three, but all three have been expressing interest
4 to try to locate lands to rebury remains that –
5 that exist but have not been requested for return
6 from museums in the greater New York City vicinity,
7 because the tribe believes that those remains
8 should remain in the area and they do not want to
9 bring them to Oklahoma or Wisconsin, but they'd
10 like to rebury them in the area in which they lived
11 and inhabited.

12 So I know they've approached West Point, and
13 West Point considered it and then declined their
14 request for an area in the – on the base there.
15 And they've approached us. They've approached two
16 historic sites, two sites in a recreation area in
17 the New York City area. And for the reasons
18 discussed earlier by Christine Landrum, for the
19 same reasons under Park Service policies, we can
20 accept for reburial remains that were acquired from
21 within the boundaries, the external boundaries of a
22 park site, but we're – we refrain from remains from
23 outside that area. So we've declined that area,
24 but just last week the NAGPRA representatives of
25 the Stockbridge-Munsee again brought up the issue.

1 So we're going to help put them in touch and
2 facilitate discussions with the City of New York
3 and possibly the state. I just wanted to express
4 that, you know, in the Northeast Region this is
5 also an important issue. That's an example of it.

6 ROSITA WORL: Thank you.

7 Do we have any comments or questions?

8 It definitely is reaffirming that it is an
9 issue and I could – and I imagine that as we begin
10 to repatriate further with our – since we've
11 adopted those regulations, that we can see that it
12 may become an increasingly priority issue for us
13 and we might even begin to think about, you know,
14 looking at – you know, making some projections and
15 seeing, you know, what – you know, I think we're
16 going to have to do something. It may require even
17 some legislative work. I'm not too sure yet, but
18 it certainly seems, you know, just from the
19 presentations we've heard today, and from what we
20 all know as being engaged in this issue, that it is
21 going to become an increasingly important issue for
22 us to address. So thank you.

23 SHERRY HUTT: We have one last person for
24 today. The rest are for tomorrow. And if we could
25 call John Norder forward to our –

JOHN NORDER

JOHN NORDER: Thank you, Madam Chair and members of the committee. My name is John Norder, and I am present as an observer for the Society for American Archeology. The society actually has no questions or comments for this meeting, but for the record wanted to express its appreciation to the NAGPRA Review Committee for the opportunity to observe these proceedings. Thank you.

ROSITA WORL: Thank you very much, and I hope you'll come again tomorrow.

JOHN NORDER: We will.

ROSITA WORL: So that's all, Madam DFO?

SHERRY HUTT: That is all we have for today, Madam Chairman.

ROSITA WORL: So the Review Committee will recess until 8:30 tomorrow morning, promptly at 8:30.

SHERRY HUTT: Thank you.

ROSITA WORL: So thank you all for being here today, and we hope we get to see you again tomorrow. We are adjourned for the evening – or recessed, sorry, recessed.

MEETING RECESS

1